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THE DIGEST

OF

INDIAN LAW REPORTS

A Compendium



OF THE RULINGS

OF THE SEVERAL HIGH COURTS IN INDIA

AND

OF THE PRIVY COUNCIL

FROM 1876 TO 1881.

VOL. II.

BY

D. SUTHERLAND

Middle Temple

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PREFACE.

The increasing demand for my Digest of Indian Law Reports, as shown by the rapid sale of the first volume, has encouraged me, in the preparation of a second volume, to devote considerable time and labor to its further extension and improvement.

Accordingly, the present volume, though in fact a continuation of and supplementary to the former, is a Digest of the Indian Law Reports generally. It is, therefore, in one respect, unlike the former work, inasmuch as it comprises the rulings of all the High Courts in India, and will, on that account, prove equally useful throughout all India.

Like the first volume, the present work includes the rulings of the Judicial Committee of Her Majesty's Privy Council on Appeal from all the Presidencies. Some of these rulings, which appeared in the former volume as cited from my Weekly Reporter only, have, for facility of reference, been re-introduced into the present work with corresponding citations from Moore's Indian Appeals, the Law Reports as published by the Council of Law Reporting in England, the Bengal Law Reports, and the second and third volumes of my recently-published collections of Privy Council Judgments.

June, 1881.

LIST OF WORKS REFERRED TO, WITH TABLE OF ABBREVIATIONS, ETC.

ABBREVIATIONS.	NAME OF WORK.
B. L. R.	Bengal Law Reports.
B. L. R. P. C.	Ditto, Ditto, Privy Council Rulings.
I. L. R. All.	Indian Law Reports, Allahabad Series, Vols. I and II.
I. L. R. Bom.	Ditto, Ditto, Bombay Series, from the beginning down to Vol. V, January 1881.
I. L. R. Cal.	Ditto, Ditto, Calcutta Series, from the beginning down to Vol VI, February 1881.
I. L. R. Mad.	Ditto, Ditto, Madras Series, from the beginning down to Vol. II, Part IX, October 1880.
L. R. I. A.	Law Reports (English), Privy Council Rulings on Indian Appeals, from the beginning down to Vol. VIII, Part I, April 1881.
L. R. I. A. Sup.	Ditto, Ditto, Supplemental Vol. for 1872-3.
Moo.	Moore's Privy Council Reports, Indian Appeals.
W. R.	Sutherland's Weekly Reporter.
W. R. Cr.	Ditto, Ditto, Criminal Rulings.
W. R. P. C.	Ditto, Ditto, Privy Council Rulings.

Cr. before a reference denotes a Criminal Ruling.

F. B. before a reference denotes a Full Bench Ruling.

O. J. before a reference denotes a Ruling of the High Court, Original Civil Jurisdiction.

O. J. Ap. before a reference denotes a Ruling of the High Court on Appeal from Original Jurisdiction.

O. J. Cr. before a reference denotes a Criminal Ruling of the High Court, Original Jurisdiction.

P. C. before a reference denotes a Privy Council Ruling.

Reports cited parenthetically contain the same Ruling as the Reports to which the parenthesis is affixed.

DIGEST OF INDIAN LAW REPORTS.

Abatement.

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Enhancement 20.
Estoppel 9.
Limitation (Act XV of 1877) 5.
Practice (Appeal) 17.
Practice (Suit) 12.
Putnee 14.
Recognizance 1.

Abdication.

See Raj 1.

Abetment.

1. The offence of — under the Penal Code is a substantive offence. The conviction of an abettor is, therefore, in no way dependent on the conviction of the principal. (Cr.) I. L. R. 1 Bom. 15.

2. The accused was convicted by the Magistrate of abetting the kidnapping of a minor. The accused, not knowing that the minor had left home without the consent of his parents, and at the instigation of K. the actual kidnapper, undertook to convey the minor to Kandy in Ceylon, and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and K previous to the completion of the kidnapping by the latter: *Held* by the High Court that so long as the process of taking the minor out of the keeping of her lawful guardian continued, the offence of kidnapping may be abetted, and that, in the present case, the conviction should be of an offence punishable under ss. 363 and 116 Penal Code. (Cr.) I. L. R. 1 Mad. 173.

3. It is not necessary to an indictment for the — of an — of an offence to show that such offence was actually committed. (Cr.) I. L. R. 4 Cal. 366.

See **False Evidence 1.**
Marriage 7, 12.
Theft 2.

Abkaree.

See **Summary Trial 1.**

Absconding.

See **Co-Sharers 11.**

Acceptance.

See **Attachment 15.**
Bill of Exchange 1, 2, 3, 4.
Gift 15.
Pottah 2, 5, 8, 9.
Sale 7.

Accomplice.

1. It is not competent to a Magistrate to convert an accused person into a witness except when a pardon has been lawfully granted under Act X of 1872 s. 347. Evidence given by such a person who had received a pardon in the case of an offence not exclusively triable by the Court of Session, was held not relevant; that person not having been acquitted or discharged or convicted. (Cr.) I. L. R. 1 Bom. 610.

2. Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with other persons in offences none of which were exclusively triable by the Court of Sessions, and such person was examined as a witness in the case: *Held* that, the tender of pardon to such person not being warranted by Act X of 1872 s. 347, he could not legally be examined on oath, and his evidence was inadmissible; and that the statement made by such person was irrelevant and inadmissible as a confession, with reference to s. 344 of that Act and to Act I of 1872 s. 24. (Cr.) I. L. R. 2 All. 260.

See Evidence (Admissions and Statements) 6, 7, 9, 11, 12.
Evidence (Corroborative) 1, 2, 3, 4, 5.

Accord and Satisfaction.

See Sheriff 7.

Account.

1. In a suit for a sum of money on an unadjusted —, plaintiff filed a memorandum (A) with her plaint, from which the amount claimed in the plaint could not be made out. In her examination by the Court, plaintiff put in another memorandum (C) to explain memorandum A. Defendant admitted that memorandum C was signed by him. It had reference to a period immediately preceding that for which the suit was brought: *Held* that memorandum C was rather evidence to support the originally stated cause of action, than an amendment of the claim or the substitution of one claim or cause of action for another; and that the case should have been decided, not merely on the discrepancy between plaintiff's two statements, but on the whole of the evidence. (P.C.) 2 P. C. R. 355 (14 W. R. P. C. 24).

2. The omission of an accountable party framing his own — to carry forward into a new — a balance against himself existing in a former — can constitute no evidence in his favor. (P.C.) *Ib.*

3. The decree of the Court of first instance directed the Commissioner to take an — of the moneys paid by the plaintiff, between 24th January 1865 and the date of the filing of the plaint, for the use and at the request of the defendants, and to allow credit to the defendants for the sums for which the plaintiff had given credit in his particulars of demand, and for all other sums for which the defendants should prove themselves entitled to credit where the same might have become payable. The defendants in their surcharge to the plaintiff's — claimed credit for various payments made by them to the plaintiff between 25th January 1865 and 5th July 1865. The plaintiff claimed to appropriate these payments in satisfaction of his claim against the defendants prior to 24th January 1865. The Commissioner, by his construction of the terms of the decree, held the plaintiff entitled to make such appropriation. The Judge

ACCOUNT—(*continued*).

in the Court of first instance explained his decree to mean that the whole — prior to 24th January 1865 was wiped out, and directed the Commissioner that the plaintiff was not entitled to make the appropriation he claimed: *Held* that the construction put by the Commissioner on the decree was right. (O. J. Ap.) I. L. R. 1 Bom. 1.

See Account Books.
Attorney and Client 1.
Bond 2.
Court Fees 3, 4, 7.
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,, (Act XV of 1877) 18, 19, 39, 40, 44.
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Religious or Charitable Trusts 2.
Res Judicata 36.
Small Cause Court 2.
Tender 1.
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Zur-i-peshgee 1.

Account Books.

See Banker 1.
Court Fees 3, 4.
Evidence (Documentary) 6.
Limitation (Act IX of 1871) 87, 99.
Partnership 2, 12.
Privy Council 4.

Accumulations.

See Attorney and Client 1.
Endowment 27.
Hindoo Widow 13, 57.
Interest 13.
Will 2, 4, 7, 46.

Accused.

1. The authority given to a Sessions Court to examine an — does not contemplate the cross-examination of such —; nor can the Judge endeavor, by a series of searching questions, to force the — to criminate himself. Exposition of the real object involved in the power given to the Court under Act X of 1872 s. 250. (Cr.) I. L. R. 6 Cal. 96.

See Arrest 1.
Bail 1.
Confession.
Evidence (Admissions and Statements) 3, 4, 5, 6, 7, 9, 10.
Magistrate 3.
Practice (Criminal Trials) 5, 6, 7.
Witness 7.

Acquiescence.

1. It is not the practice of the Courts in India or of the Privy Council to press against either an infant or a Hindoo female a presumption by — in a rival claim from the mere non-contestation for a limited time of an adverse title. (P.C.) 2 P. C. R. 493 (17 W. R. 1; 14 Moo. 346). *But see* 2 P. C. R. 525 (17 W. R. 108).

See Attorney and Client 1.
Building 1.
Co-Sharers 9.
Execution of Decree 14.
Guarantee 1.
Hindoo Widow 4.
Lien 3.
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Right to Light and Air 6.
Securities (Government) 2.

Acquittal.

See Criminal Proceedings 9.
High Court 12, 20, 23, 28, 34.
Jury 4, 5.
Limitation 16.
Murder 2.

Act XVI of 1838.

s. 1 cl. 2. *See* Land Dispute 2.
See Land Dispute 2.

Act XXXII of 1839.

See Interest 7.

Act IV of 1840.

See Julkur 1, 2.
Prescription 1.

Act XIX of 1841.

See Guardian and Minor 35.

Act V of 1843.

See Slave 1.

Act XIX of 1843.

See Registration 18, 54.

Act XIX of 1844.

See Hindoo Law (Religious Ceremonies) 5.

Act I of 1845.

s. 9. *See* Mortgage 3.
s. 21. *See* Hindoo Law (Coparcenary) 5.
s. 29. *See* Limitation 15.

Act IX of 1847.

See Churs 20.
Revenue Settlement 3.

Act IX of 1850.

s. 88. *See* Husband and Wife 5.
s. 25. *See* Small Cause Court 9.
s. 42. *See* ,, ,, ,, 3.
s. 58. *See* Execution of Decree 32.
s. 78. *See* ,, ,, 8.
s. 91. *See* Small Cause Court 9, 10.

Act XVIII of 1850.

s. 1. *See* Jurisdiction 30.
See Jurisdiction 19.

Act XXI of 1850.

See Forfeiture 1.
Guardian and Minor 18.
Hindoo Widow 23.

Act XXVI of 1850.

s. 6. *See* Municipal 3.

Act XVIII of 1854.

s. 1. *See* Railway 1.
s. 11. *See* ,, 6.
s. 43. *See* ,, 3.
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Act XXVIII of 1855.

See Interest 9, 22.

Act XXI of 1856.

s. 49. *See* Summary Trial 1.

Act XXXV of 1858.

s. 9. *See* Court of Wards 2.
See Lunatic 1.

Act XL of 1858.

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Act VIII of 1859.

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s. 11. *See* Poisonous Drugs 1.

Act X of 1866.

s. 47. *See* Bill of Exchange 3.
Joint Stock Company 7.
s. 141. *See* " " 5.
s. 174. *See* " " 1.
s. 175. *See* " " 6.
s. 189. *See* " " 8.
See Partnership 11.

Act XIII of 1866.

See Oudh Sub-Settlement 6.

Act XX of 1866.

s. 2. *See* Registration 1, 18.
s. 17. *See* " 13, 14, 16, 27.
s. 18. *See* " 14.
s. 19. *See* " 8.
s. 21. *See* " 8.
s. 22. *See* " 6.
s. 36. *See* " 8.
s. 49. *See* " 1, 16.
s. 50. *See* " 18.
s. 52. *See* Limitation (Act IX of 1871) 61.
Registration 28.
s. 53. *See* Limitation (Act IX of 1871) 61.
Money Decree 1.
Registration 28.
s. 84. " 2.
s. 88. " 5, 8.
See Mortgage 98.
Registration 18, 23, 54.

Act XXVI of 1866.

See Oudh Estates 3.
Oudh Sub-Settlement 1, 2, 3, 4, 7.

Act II of 1867 (Bengal).

s. 5. *See* Gambling 3, 4.
s. 6. *See* " 1, 4.

Act VIII of 1867 (Bombay).

s. 9. *See* Patel 2.
s. 13. *See* Criminal Proceedings 20.

Act XXIV of 1867.

s. 60. *See* Res Judicata 17.

Act I of 1868.

s. 2 cl. 13, &c. *See* Magistrate 4.
s. 6. *See* Execution of Decree 18, 19.
High Court 30.
Murder 1.
Pension 4.
Registration 31, 55.
Sale (in Execution of Decree) 52.

Act V of 1868 (Bombay).

s. 5. *See* Building Lease 1.
See Building Lease 3.

Act VII of 1868 (Bengal).

s. 18. *See* Jurisdiction 39.
s. 19. *See* Khas Mehal 1.
See Jurisdiction 39.

Act VIII of 1868.

See Murder 1.

Act XIV of 1868.

s. 11. *See* Contagious Diseases 2.
s. 21. *See* " " 2.
See Contagious Diseases 1.

Act I of 1869.

s. 8. *See* Oudh Estates 7.
s. 22 cl. 4. *See* Oudh Estates 10.
" cl. 11. *See* " " 12.
See Mortgage 21*a*.
Oudh Estates 1, 5, 7, 8, 9.

Act III of 1869 (Bombay).

s. 8. *See* Cesses.

Act IV of 1869.

s. 3 cl. 9. *See* Divorce 7.

Act VIII of 1869 (Bengal).

s. 4. *See* Enhancement 10, 27.
s. 6. *See* Right of Occupancy 9, 10.
s. 14. *See* Churs 22.
Enhancement 19, 22.
s. 17. *See* " 27, 38.
s. 18. *See* " 30.
s. 22. *See* Ejectment 4.
s. 27. *See* " 4.
Limitation 14, 47.
Right of Occupancy 12.
s. 29. *See* Limitation 29, 30, 32, 35, 49.
Putnee 10.
s. 30. *See* Limitation 46.
" (Act XV of 1877) 19.
s. 52. *See* Ejectment 6.
Limitation 50.
s. 53. *See* Ejectment 5.
s. 58. *See* Limitation 25.
s. 59. *See* Putnee 15.
s. 61. *See* Under Tenure 3.
s. 66. *See* Sale (in Execution of Decree) 35.
s. 95. *See* Jurisdiction 14.
s. 98. *See* " 14.
s. 102. *See* Special Appeal 6.
See Ejectment 2.
Enhancement 27.
Right of Occupancy 7.
Sale (in Execution of Decree) 10.

Act XIV of 1869 (Bombay).

s. 32. *See* Guardian and Minor 14.
Municipal 8.
s. 76. *See* Guardian and Minor 35.

Act IX of 1871 (*continued*).

sch. II. art. 121. *See* Limitation (Act IX of 1871) 85.
,, art. 123. *See* ,, ,, 87.
,, art. 127. *See* ,, ,, 27, 52, 102.
,, art. 129. *See* ,, ,, 1.
,, art. 131. *See* ,, ,, 66, 80.
,, art. 132. *See* ,, ,, 90.
,, art. 133. *See* ,, ,, 84.
,, art. 134. *See* ,, ,, 26, 84.
,, art. 142. *See* ,, ,, 103.
,, art. 143. *See* ,, ,, 52.
,, art. 145. *See* ,, ,, 2, 96.
,, art. 148. *See* ,, ,, 40, 48, 65.
,, art. 149. *See* ,, (Act XIV of 1859) 28.
,, (Act IX of 1871) 71, 90.
,, art. 153. *See* ,, 16.
,, art. 157. *See* ,, (Act IX of 1871) 13.
,, art. 158. *See* ,, ,, 70.
,, art. 166. *See* ,, ,, 22, 61.
,, art. 167. *See* ,, ,, 16, 22, 42, 47, 49, 50, 53, 56, 57, 58, 59, 60, 61, 67, 72, 73, 83, 89, 105.
See Limitation (Act XV of 1877) 38.
See Declaratory Decree 11.
Limitation 32, 41, 42.
,, (Act IX of 1871) 17, 18, 23, 24, 25, 26, 27, 54, 63, 79, 91, 106, 107.
,, (Act XV of 1877) 12, 13, 44.

Act X of 1871.

s. 32. *See* Excise 2, 4.
s. 57. *See* ,, 4.
s. 62. *See* ,, 2, 3, 4.

Act X of 1871 (Bengal).

See Road Cess 1, 2.

Act XXIII of 1871.

s. 3. *See* Toda Giras Huk 3, 5.
s. 4. *See* Deshmukhs 1.
Pension 1.
Toda Giras Huk 6, 10.
s. 5. *See* Pension 1.
s. 6. *See* Limitation (Act XV of 1877) 6.
Pension 1.
Res Judicata 26.
Toda Giras Huk.
s. 11. *See* Toda Giras Huk 4, 5.
See Construction 52.
Patel 1.
Pension 2.
Limitation (Act IX of 1871) 57.
Toda Giras Huk 1, 2.

Act XXV of 1871.

s. 2. *See* Railway 1.

Act I of 1872.

s. 11. *See* Judgment 2.
s. 13. *See* Evidence (Documentary) 11.
Judgment 2.
Res Judicata 21.
s. 24. *See* Accomplice 2.
Evidence (Admissions and Statements) 9.
s. 25. *See* ,, ,, ,, 8, 7, 9.
s. 26. *See* Evidence ,, ,, 3, 9.
Magistrate 4.
s. 30. *See* Evidence (Admissions and Statements) 11, 12.
Evidence (Corroborative) 5.
s. 32 cl. 2. *See* Evidence (Documentary) 6.
s. 33. *See* Zanzibar 4.
s. 34. *See* Evidence (Documentary) 6.
s. 35. *See* Hindoo Law (Inheritance and Succession) 30.
s. 50. *See* Marriage 13.
s. 54. *See* Jury 9.
s. 65. *See* Evidence (Secondary) 2, 3.
s. 74. *See* ,, (Documentary) 8.
Marine 6.
s. 83. *See* Evidence (Documentary) 11.
s. 91. *See* ,, ,, 10.
Registration 24, 42.
s. 92. *See* Bill of Exchange 1, 4.
Bond 5.
Contract 28.
Evidence 6, 7, 8.
,, (Documentary) 9.
Principal and Agent 8.
Vendor and Purchaser 5.
s. 93. *See* Mortgage 51.
s. 95. *See* Bond 5.
s. 101. *See* Onus Probandi 4.
s. 103. *See* ,, ,, ,,
s. 106. *See* ,, ,, ,,
s. 108. *See* Death 1.
s. 114. *See* Evidence (Corroborative) 3.
s. 115. *See* Estoppel 13, 17.
Evidence 12.
s. 126. *See* Attorney and Client 3, 4.
s. 133. *See* Evidence (Corroborative) 2.
s. 138. *See* Practice (Criminal Trials) 8.
s. 145. *See* Evidence (Documentary) 6.
s. 159. *See* ,, (Secondary) 1.
s. 165. *See* Witness 7.
s. 167. *See* High Court 3, 26.
chap. VIII. *See* Estoppel 15.
See Practice (Criminal Trials) 2.
Res Judicata 21, 22.
Survey 3.

Act IX of 1872.

s. 10. *See* Interest 22.
s. 18. *See* Misrepresentation 1.
Mortgage 30.
s. 19. *See* Misrepresentation 1.
Sale 6.
s. 20. *See* Mortgage 30.
s. 23. *See* Champerty 6.
Guardian and Minor 32.
s. 23 cl. 2. *See* Mortgage 30.
s. 25. *See* Hoondee 4.
s. 25 cl. 3. *See* Instalments 1.
Limitation (Act IX of 1871) 30.
s. 27. *See* Restraint of Trade 1.
s. 28. *See* Contract 7, 10, 10*a*, 16.

Act IX of 1872 (*continued*).

s. 28 Excep. 1. *See* Contract 7, 8, 9, 10*a*.
s. 29. *See* Mortgage 51.
s. 39. *See* Vendor and Purchaser 5.
s. 43. *See* Promissory Note 3.
s. 44. *See* Partnership.
s. 65. *See* Arbitration 19.
s. 69. *See* Cesses.
Reimbursement 1.
s. 70. *See* Cesses.
s. 72. *See* Payment 2.
Small Cause Court 31.
s. 74. *See* Contract 15.
Interest 11.
s. 76. *See* Stolen Property 1.
s. 78. *See* Sale 6.
s. 86. *See* ,, ,,
s. 127. *See* Principal and Surety 5.
s. 132. *See* Bill of Exchange 1.
s. 139. *See* ,, ,, 1.
s. 151. *See* Bailment 5.
Railway 7.
s. 152. *See* ,, 7.
s. 171. *See* Attorney and Client 9.
s. 178. *See* Bailment 1, 2, 3.
s. 230. *See* Principal and Agent 7, 8.
s. 231. *See* ,, ,, 10, 11.
s. 232. *See* ,, ,, 10, 12.
s. 234. *See* ,, ,, 11, 12.
s. 247. *See* Guardian and Minor 20.
s. 265. *See* Partnership 13.
See Building 3.
Principal and Agent 9.

Act X of 1872.

s. 4. *See* Bench of Magistrates 1.
Criminal Proceedings 20.
s. 18. *See* Enhancement 34.
s. 36. *See* High Court 31.
s. 46. *See* Criminal Proceedings 5.
s. 50. *See* Bench of Magistrates 1.
s. 56. *See* Jurisdiction 16.
s. 64. *See* ,, 42.
s. 67. *See* ,, 18, 22.
s. 89. *See* Public Servant 2.
s. 90. *See* Information 1, 2, 3.
Public Servant 1, 2.
s. 122. *See* Evidence (Admissions and Statements) 4, 10.
Magistrate 3, 5, 6, 7.
s. 135. *See* Criminal Proceedings 13.
s. 142. *See* ,, ,, 14.
s. 157. *See* Extradition 1.
s. 193. *See* Magistrate 5.
s. 209. *See* Compensation 1.
s. 210. *See* Contempt of Lawful Authority of Public Servant 2.
s. 215. *See* Commitment 9.
Discharge 2, 3.
Dismissal of Complaint 1.
s. 220. *See* Criminal Proceedings 9.
s. 221. *See* ,, ,, 9.
s. 222. *See* Jurisdiction 16.
Summary Trial 1.
s. 231. *See* Commitment 3.
s. 250. *See* Accused 1.
s. 263. *See* Jury 1, 4, 5, 6, 7, 12.
Murder 2.
s. 272. *See* Arrest 1.
Limitation 16.
Murder 2.
s. 278. *See* Practice (Review) 18.
s. 280. *See* ,, (Appeal) 6.
s. 283. *See* High Court 28.
s. 285. *See* Practice (Review) 18.
s. 287. *See* Murder 5.
s. 288. *See* ,, 4.
s. 294. *See* High Court 9.
s. 295. *See* Discharge 1.
s. 296. *See* Commitment 1, 2, 9.
Criminal Proceedings 13.
Discharge 1, 4.
High Court 17, 39.
s. 297. *See* Commitment 5.
Discharge 1.
High Court 9, 10, 14, 20, 23, 33, 34, 37.
s. 300. *See* ,, 28.
s. 309. *See* Affray 1.
Imprisonment 2.
s. 314. *See* Cumulative Sentences 2.
s. 344. *See* Accomplice 2.
s. 346. *See* Evidence (Admissions and Statements) 4, 8, 10.
Magistrate 5, 7.
s. 347. *See* Accomplice 1, 2.
s. 359. *See* Witness 6.
s. 390. *See* Bail 1.
ss. 415 to 418. *See* Property seized by Police 1.
s. 416. *See* ,, ,, ,, 1.
s. 417. *See* ,, ,, ,, 1.
s. 418. *See* ,, ,, ,, 1, 2.
s. 419. *See* Stolen Property 1.
s. 426. *See* Lunatic 2.
s. 432. *See* ,, 2.
s. 452. *See* Practice (Criminal Trials) 1.
s. 453. *See* Joinder of Charges 1.
s. 454. *See* Criminal Trespass 6.
s. 457. *See* Jury 4, 10.
s. 464. *See* ,, 6.
s. 466. *See* Patel 2.
Public Servant 3, 4.
s. 467. *See* Commitment 8.
Criminal Proceedings 7, 8, 20.
s. 468. *See* Commitment 8.
Criminal Proceedings 6, 7, 8, 10, 11, 14, 18, 19, 20.
s. 469. *See* Commitment 8.
Criminal Proceedings 6, 7, 8, 18, 19.
s. 470. *See* ,, ,, 18.
s. 471. *See* Commitment 3.
Contempt of Court 8.
Criminal Proceedings 1, 2, 8, 22.
s. 472. *See* Commitment 4, 5.
Criminal Proceedings 7.
s. 473. *See* Contempt of Court 1, 2, 3, 4, 5, 8.
s. 474. *See* Commitment 7.
s. 489. *See* Security 4.
s. 502. *See* Recognizance 2.
s. 503. *See* Security 4.
s. 505. *See* ,, 3, 9.

Act XIII of 1875.

Act XVII of 1875.

Act I of 1876 (Bombay).

Act III of 1876 (Bombay).

Act X of 1876.

Act XI of 1876.

Act I of 1877.

Act III of 1877.

Act IV of 1877.

Act X of 1877.

ACT X OF 1877 (*continued*).

Act XV of 1877.

Act XV of 1877 (*continued*).

sch. II. art. 142. *See* Limitation (Act XV of 1877) 27, 28.
,, art. 144. *See* ,, ,, 29, 30, 34, 51.
,, art. 165. *See* ,, (Act XV of 1877) 22.
,, art. 171. *See* ,, ,, 5.
,, art. 177. *See* ,, ,, 1.
,, art. 178. *See* ,, ,, 10, 46.
,, art. 179. *See* ,, ,, 5.
,, (Act IX of 1871) 26, 35, 38, 105.

See Limitation (Act IX of 1871) 79.
,, (Act XV of 1877) 12, 44.
Plaint 13.

Act VII of 1878 (Bombay).

s. 6. *See* Cotton Frauds (Bombay) 2.
s. 14. *See* ,, ,, ,, 2.

Act VIII of 1878.

s. 128. *See* Transshipment 1.

Act XII of 1879.

s. 2. *See* Plaint 5.
s. 7. *See* Bond 6.
s. 36. *See* Execution of Decree 44.
s. 73. *See* Guardian and Minor 36.
s. 102. *See* Sale (in Execution of Decree) 52.
See Execution of Decree 43.
Plaint 10.

Act XVII of 1879.

s. 1. *See* Deccan Agriculturists Relief 2.
s. 2. *See* ,, ,, ,, 3.
s. 3. *See* ,, ,, ,, 2.
s. 11. *See* ,, ,, ,, 1, 2, 7, 8, 9.
s. 12. *See* ,, ,, ,, 1.
s. 21. *See* ,, ,, ,, 5.
s. 22. *See* ,, ,, ,, 5.
See Deccan Agriculturists Relief 6, 10.

Act of God.

See Embankment 1.
Railway 7, 8.
Tank 1.

Act of State.

See Government 1.

Acts (of the Indian Legislature).

Remarks on the legal character of the "Illustrations" attached to the —, and opinion expressed that they form no part of those Acts. I. L. R. 1 All. 487.

Adjournment.

1. A Court ought not to adjourn a case for the production of a document, much less (when it does so) to allow witnesses and several of the parties who were interested in the result, to be recalled and to add to and vary the evidence which they had previously given, in order to prove a case which they had not set up. (P. C.) 3 P. C. R. 304 (26 W. R. 55; L. R. 3 I. A. 259).

2. In a suit issues having been settled, the final hearing of the suit was adjourned to a fixed date for final disposal. On that date plaintiff did not appear, and the suit was dismissed under Act VIII of 1859 s. 148: *Held* that as this was not a case which had been adjourned in favor of either party to enable him to "produce his proofs or cause the attendance of his witnesses," the order was not one which could properly be made. I. L. R. 1 Mad. 287.

See Ex-Parte 1.
Registration 40.
Small Cause Court 20.
Witness 5.

Adjustment.

1. N, having obtained a decree in a suit against K, requested him to discharge certain sums due on outstanding bonds which N had given to third parties, promising to credit the sums so paid to the amount due under the aforesaid decree. K paid as requested, but N took out execution in full of the decree, and the Court refused to recognise the payments made by K out of Court. In a suit by K for the money paid as aforesaid: *Held* that the payments not having been made directly in — of a decree, the suit was not barred. I. L. R. 1 Mad. 203.

See Limitation (Act XIV of 1859) 20.
,, (Act IX of 1871) 32.
Mortgage 7, 22, 93.

Administration.

See Administrator-General.
Certificate 1.
Guardian and Minor 26.
Letters of —.
Manager 5.
Will 56.

Administrator-General.

1. The order passed by a single Judge of the High Court under Act II of 1874 s. 24, allowing the — commission at a certain rate, is subject to appeal to the High Court under cl. 15 of the Letters Patent. Though such order, being discretionary, would not under ordinary circumstances be interfered with on appeal, yet, where it is not in accordance with the rule laid down in s. 54 of the Act, the Appellate Court will interfere to rectify it. Where there has been only collection, but no distribution of the assets by the —, such order ought, in accordance with the rule laid down in s. 54, to award only half of the full commission of 5 per cent. I. L. R. 1 Mad. 148.

2. The — of Madras is authorized to pay a barred debt. I. L. R. 1 Mad. 267.

3. Act II of 1874 s. 63 contemplates that the money which is the subject of the petition may be claimed by parties other than the applicant, and that those parties may appear and be represented at the hearing; and the words "binding on all parties" were intended to make the order binding upon such parties as well as on the petitioner. (O. J. Ap.) I. L. R. 3 Cal. 340.

4. The order passed under the above section can be reviewed under Act X of 1877 s. 623. (O. J. Ap.) *Ib.*

5. Grants of letters of administration to the — are made to him by virtue of Act II of 1874, and are not in any way affected by the provisions of Act XIII of 1875. The form of grant should be general and unlimited. (O. J. Ap.) I. L. R. 4 Cal. 770.

See Court Fees 9.
Death 1.
Practice (Suit) 19.
Res Judicata 17.
Succession 2.
Will 56.

Advancement.

See Succession 4.

Adultery.

1. N charged T with having committed — with his wife. On enquiry into the charge by the Magistrate, the case was committed to the Sessions Court for trial, when T was convicted. T appealed to the High Court. After conviction N and his wife were reconciled, and N at the hearing of the appeal asked for leave to compound the offence: *Held* that, at that stage of the case, sanction could not be given to withdraw the charge. (Cr.) I. L. R. 2 All. 339.

See Divorce 4, 5, 6.
Illegitimate 5, 6.
Marriage 13.

Adverse Possession.

See Churs 16, 17*a*, 21.
Landlord and Tenant 9.
Limitation 7, 13, 45.
,, (Act XIV of 1859) 11*a*.
,, (Act IX of 1871) 31.
,, (Act XV of 1877) 3, 28.
Possession 11, 16.
Practice (Suit) 1.
Title 1.

Advocate.

See Advocate-General.
Barrister 1.
Counsel.
High Court 19.

Advocate-General.

See Endowment 32.

Affidavit.

1. An —, intended to be used to oppose or show cause against a motion or petition, is filed in time, if filed on or before the sitting of the Court, on the day that cause is in fact shown, although not filed before the sitting of the Court on the day for which notice was given. (O. J.) I. L. R. 5 Cal. 605.

See Bond 4.
High Court 4.
Practice (Suit) 7, 15.

Affirmation.

See Oath or Affirmation.

Affray.

1. Prisoners were convicted of an offence punishable under s. 160 Penal Code, and were sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for 30 days, the full term of imprisonment under the section: *Held* that, having regard to Act X of 1872 s. 309, the sentence was legal. (F. B. Cr.) I. L. R. 1 Mad. 277.
But see I. L. R. 1 All. 461.

Ahir.

See Illegitimate 10.

Ajmere Courts.

1. On an appeal from a decision in a civil suit of the Assistant Commissioner of Ajmere to the Commissioner of Ajmere, the latter, feeling doubtful on a question of the nature specified in the — Reg. I of 1877 s. 17, referred such question, under s. 36 of that Regulation, to the Chief Commissioner of Ajmere and Mairwara. The Chief Commissioner dealt with the case as prescribed in s. 37 of that Regulation, and returned it to the Commissioner, who dismissed the suit in accordance with the Chief Commissioner's judgment. The plaintiff preferred an appeal to the Chief Commissioner from the Commissioner's decision. The Chief Commissioner did not make any order on the memorandum of appeal admitting it, or directing that it should be registered, or that the respondent should be summoned, or that the appellant should appear on a certain day under Act X of 1877 s. 551, but issued a notice to the appellant's Counsel to appear on a certain day. The appellant's Counsel appeared on that day, and the Chief Commissioner intimated that he was acting under Act X of 1877 s. 551. The appellant's Counsel then proceeded to address the Chief Commissioner, and was heard for some time, and then stopped, in consequence of the Chief Commissioner resolving to refer to the High Court the question whether the appeal from the Commissioner's decision lay to him or to Her Majesty in Council. The Chief Commissioner subsequently referred such question to the High Court: *Held* by the Full Bench, on a reference by the Division Bench before which the Chief Commissioner's reference came, that such question arose "in the trial of an appeal" within the meaning of the — Reg. I of 1877 s. 21, and was properly referred to the High Court: *Held* by the Division Bench that the appeal from the Commissioner's decision lay, in this particular case, not to the Chief Commissioner, but to Her Majesty in Council. (F.B.) I. L. R. 2 All. 819.

Alienation.

See Attached Property 2, 3.
Attachment 3, 4, 7, 11, 13, 18.
Conveyance (Transfer and Assignment) 2.
Debtor and Creditor 2, 5.
Grant 7.
Hindoo Law (Alienation).
Money Decree 2.
Mortgage 64, 67.
Sale 4.
Sthanam 1.

Alimony.

See Husband and Wife 13.
Maintenance.

Alluvion.

See Churs.

Ameen.

See Boundary 4.
Possession 17.
Privy Council 20.

Amendment.

See Account 1.
Cheque 1.
Decree 2, 16.
Issues 5, 6, 8, 9.
Joint Stock Company 4.
Jurisdiction 38.
Partnership 18.

AMENDMENT (*continued*).

See Plaint 1, 6, 7, 8, 9, 13.
Practice (Suit) 19.
Pre-emption 10.
Relinquishment 4.
Small Cause Court 10.
Will 54.

American.

See Jury 2.

Ancestral Property.

1. Under the Mitacshara (as well as the Mithila) law,— which descends to a father is not exempt from liability to pay his debts because a son is born to him, unless the debt is illegal, or has been contracted for an immoral purpose, in which case the son may not be under any pious obligation to pay it. (P.C.) 2 P. C. R. 29 (18 W. R. 81 *n.*; 6 Moo. 393); 2 P. C. R. 984 (22 W. R. 56; L. R. 1 I. A. 321; 14 B. L. R. 187). *See also* 23 W. R. 365, 395; 24 W. R. 231, 274, 364; 25 W. R. 148, 185, 202, 311.

Under the Mitacshara law, each son, upon his birth, takes a share (interest) equal to that of his father in immoveable —. (P. C.) 3 P. C. R. 589 (L. R. 6 I. A. 88; I. L. R. 5 Cal. 148).

Attending *nautches*, and occasionally giving *nautches*, cannot be considered immorality absolving from such obligation. 23 W. R. 260.

Nor is a high rate of interest a ground for invalidating the debt. 25 W. R. 421 (I. L. R. 2 Cal. 213).

A question of liability of this sort cannot be tried in execution proceedings, but must form the subject of an independent suit. 23 W. R. 265, 24 W. R. 364.

The fact that one member of the family is separate in residence and mess in no way affects his position as to the — until a separation in estate has taken place. 25 W. R. 116.

Under the Mitacshara and Mayukha, the son takes a vested interest in the — at his birth; but that interest is subject to the liability of that estate for the debts of his father and grandfather. I. L. R. 1 Bom. 262.

The — of a Hindoo father may be sold either by himself, or by a Civil Court having jurisdiction, in satisfaction of his debts not contracted for illegal or immoral purposes; and such sale will bind sons *in esse* at the time of the sale. *Ib.*

Where the property in suit originally belonged to plaintiff's grandfather, who came to a partition of his property with his brother, and on the grandfather's death his two sons, the father and uncle of the plaintiff, divided the estate between them, the property in suit falling to the share of plaintiff's father: *Held* that notwithstanding the partition by plaintiff's father, the property was — in which the plaintiff at his birth acquired an interest. I. L. R. 3 Cal. 1.

Held also that the question to be tried in the suit was, according to the above leading case, not whether there was any legal necessity for the alienation, but whether the debt of the father in satisfaction of which the alienation was made, was incurred for an immoral purpose; and that, under the circumstances, the *onus* was on plaintiff to show that it was. *Quære:* whether a son is bound to discharge debts of the father which are illegal, though not immoral. *Ib.*

The expression "family necessity," when used to justify the sale of —, must be construed reasonably; and the head of the family and those dealing with him must be supported in transactions which, though in themselves diminishing the estate, yet prevent or tend to prevent still greater losses. A reasonable latitude must be allowed for the exercise of a manager's judgment, especially in the case of a father, though this must not be extended so far as to free the persons dealing with him from the need of all precautions where a minor son has an interest in the property. I. L. R. 2 Bom. 666.

The fact that a mortgage or a bond, to pay off which — is sold, had some time to run, is not a sufficient reason to disprove an otherwise apparent family necessity. *Ib.*

The Hindoo law recognizes a debt contracted by the father of a family to enable him to earn a maintenance as one contracted under pressure of a family necessity. *Ib.*

The purchaser of the rights and interests of a judgment-debtor, who is a member of a joint family, at a sale in execution of a decree, does not acquire any title to the rights and interests of the other members of the family, unless it is clear that the judgment-debtor was sued in a representative capacity. I. L. R. 5 Cal. 144.

Where a father mortgaged a joint family estate as security for a loan for the use and benefit of the family, and the lender brought a suit and obtained a decree against the father: *Held* that the whole estate was saleable in execution. I. L. R. 2 All. 746.

Under the Mitacshara law, according to the rulings of the Judicial Committee, the payment, even in the father's lifetime, of an antecedent debt due by him, is a pious duty on the part of the son, and its discharge is, therefore, such a necessary purpose as to give validity to a sale or mortgage by the father as against his minor sons. Such antecedent debt means a debt antecedent to the transaction, *viz.*, the sale or mortgage purporting to deal with the property. I. L. R. 6 Cal. 135.

In a suit upon a mortgage by the father alone, where the sons are made parties, the decree would be good as against the sons, even though they may have been adult when the debt (assuming it was not for immoral purposes) was incurred, and the whole property would be bound. *Ib.* *See* 3 P. C. R. 589 (L. R. 6 I. A. 88; I. L. R. 5 Cal. 148); (F. B.) I. L. R. 2 All. 267.

2. A purchaser of joint — under an execution is not bound to go back beyond the decree to ascertain whether the Court was right in giving the decree, or having given it, in putting up the property for sale in execution. (P. C.) 2 P. C. R. 29 (18 W. R. 81 *n.*; 6 Moo. 393); 2 P. C. R. 984 (22 W. R. 56; L. R. 1 I. A. 321; 14 B. L. R. 187).

When joint — has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree, his sons, by reason of their duty to pay their father's debts, cannot recover that property unless they show that the debts were contracted for immoral purposes, and that the purchasers had notice that they were so contracted. (P. C.) 3 P. C. R. 589 (L. R. 6 I. A. 88; I. L. R. 5 Cal. 148). *See also* 23 W. R. 260, 424; 24 W. R. 281; 25 W. R. 421 (I. L. R. 2 Cal. 213); (F. B.) I. L. R. 5 Cal. 855, *Ib.* 6 Cal. 135.

The right and interest of one co-sharer in joint — may be attached and sold in execution of a decree obtained against him personally under the Mitacshara law; and the purchaser at such a sale acquires merely the right to compel a partition as against the other co-sharers which the judgment-debtor possessed. (P. C.) 3 P. C. R. 467 (L. R. 4 I. A. 247; I. L. R. 3 Cal. 198).

The two foregoing rulings appear to be perfectly consistent. I. L. R. 2 All. 800.

As against an adult son, only the right, title, and interest of the father would pass unless necessity were shown. *Quære* whether, even if necessity were proved, the interest of adult members of the family could be affected without their consent. I. L. R. 5 Cal. 845, as explained in I. L. R. 6 Cal. 135.

Where, upon a sale under a decree upon a mortgage bond against the father of a Mitacshara family, property other than that included within the mortgage-bond is sold, such sale only passes the right, title, and interest of the father. *Ib.*

Where the decree is purely a personal decree against the father, and his rights and interests only in the family property is sold, the sons are entitled to recover their shares from the auction-purchaser. I. L. R. 2 All. 899.

3. An ex-parte decree for money having been obtained against a Hindoo governed by the Mitacshara law, upon a bond whereby he had mortgaged his immoveable —, the same was attached. Prior to the execution-sale, the judgment-debtor died; and his infant sons and co-heirs, on filing a petition of objections, had been referred to a regular suit. In a suit, after the sale, by the said infants against the execution-creditor and the purchasers, for the adjudication of their right to and confirmation of possession in the property sold, and to have the mortgage-bond, the ex-

ANCESTRAL PROPERTY (*continued*).

parte decree, and the execution-sale set aside, it appeared that the father's debt had been incurred without justifying necessity: *Held* that, as between the infants and the execution-creditor, neither they nor the — in their hands was liable for the father's debt; that as regards the purchasers, they, having purchased after objections filed by the plaintiffs, must be taken to have had notice, actual or constructive, thereof, and therefore to have purchased with knowledge of plaintiffs' claim, and subject to the result of the suit to which they had been referred; and that, as regards the judgment-debtor's undivided share in the estate sold, whether or not his own alienation was valid by the Bengal law, it was capable of being seized in execution, and that the effect of the execution-sale was to transfer the said share to the purchasers, the execution proceedings having at the time of the judgment-debtor's death gone so far as to constitute in favor of the execution-creditor a valid charge thereon, which could not be defeated by the judgment-debtor's death before the actual sale. (P. C.) 3 P. C. R. 589 (L. R. 6 I. A. 88; I. L. R. 5 Cal. 148).

4. A Hindoo subject to the Mitacshara law, and forming with his sons a joint Hindoo family, mortgaged certain immoveable — during the minority of his sons. In a suit by the mortgagee against the father and sons to recover the mortgage-debt "by sale of the mortgaged property and out of other properties, as well as from the person" of the father: *Held* that it was incumbent upon the plaintiff to show for what purpose the loan was contracted, and that that purpose was one which justified the father in charging, or which the plaintiff had at least good grounds for believing did justify the father in charging, the sons' interests in the immoveable —. I. L. R. 2 Cal. 438.

5. The acceptance by one brother of a certain sum of money in satisfaction of his own share in 1868, though it may be evidence of the value of the — in that year, affords no indication of the value of that property in 1876. I. L. R. 1 Bom. 561.

6. *Quære* whether — which was moveable when it descended, has been converted into immoveable property, is not immoveable — for the purposes of the Mitacshara law. I. L. R. 3 Cal. 508.

7. By verses 1 & 2 of s. 7 chap. 1 of the Mitacshara, when a distribution of — is made during the lifetime of a father of a family subject to Mitacshara law, his wife is entitled to an equal share with her husband and her sons: *Held* in this case that the mortgages by the father and the sales in execution which occurred during his lifetime must, as against the defendants, be taken to be a distribution within the meaning of those verses; and as possession was taken by the defendants during the father's lifetime, it must be considered as a distribution made within that period, and therefore the widow was entitled to an equal share with her two sons. I. L. R. 5 Cal. 845.

8. The manager of a joint Mitacshara family (the family consisting of the father and a minor son) raised money on the mortgage of certain family property, it not being proved, on the one hand, that there was legal necessity for raising the money, nor, on the other hand, that the money was raised or expended for improper purposes, or that the lender made any enquiry as to the purpose for which the money was required: *Held* that, under such circumstances, a mortgagee could not enforce, by suit against the father and son, the mortgage itself during the father's lifetime; but the debt being an antecedent one, he would simply be entitled to a decree directing the debt to be raised out of the whole ancestral estate, including the mortgaged property. (F. B.) I. L. R. 5 Cal. 855.

9. He would, assuming the minor to be the only son, also be entitled to a similar decree against the son after the father's death. (F. B.) *Ib.*

10. Supposing the mortgagee, under the above circumstances, to have obtained a decree against the father alone for payment and sale of the property, and at the sale to have himself become the purchaser, he could not be considered a *bonâ fide* purchaser for value, and would not be entitled to the property as against the infant son, except to the extent of the father's interest therein.—(F. B.) *Ib.*

11. A mortgagee, under the same circumstances (but supposing the son to have attained majority at the time of the loan, and to have been made a party to the suit), would be entitled to a decree directing the debt to be raised out of the whole ancestral estate. (F. B.) *Ib.*

12. In the case of a joint Mitacshara family consisting of two brothers and their two minor sons, the former, being the managers, raised money by executing a *zur-i-peshgee* lease of specific family property, the lender making no enquiry as to the necessity for the loan; subsequently such managers took a sub-lease of the same property from the *zur-i-peshgeedar*, and continued in possession, and the *zur-i-peshgeedar* sued for rent and obtained a decree, and in execution became the purchaser and obtained possession. It was found as a fact that the *zur-i-peshgee* and the sub-lease were merely a device by the managers to raise money and to continue in possession of the property, but it was not shown for what purpose the money was raised: *Held* that the minor sons not having been made parties to the suit by the *zur-i-peshgeedar*, would be entitled to recover their shares as against the purchaser. (F. B.) *Ib.*

13. In respect of —, the son is equally liable for his father's debts, if not incurred for immoral purposes, as for his own debts. The interest of an adult son, however, could not ordinarily be affected by a decree against the father alone. I. L. R. 6 Cal. 135.

14. Where, however, an adult son, although neither an executant of the bond on which the suit was brought, nor a party to such suit, yet was shown to be himself liable for a large proportion of the antecedent debt due on the bond, and by his conduct had made it apparent that he approved of and fully acquiesced in the sale of the whole —, and moreover that he allowed the mortgagee to take and remain in possession for upwards of eleven years, and to go to expense in paying off encumbrances on the estate: *Held* that he was not entitled to succeed. Under the circumstances the son ought to have been made a party to the suit brought by the mortgagee. *Ib.*

See Court Fees 8.
Gift 14, 15, 16.
Guardian and Minor 32.
Hindoo Law (Coparcenary).
,, ,, (Inheritance and Succession) 16, 17, 33, 39.
Hindoo Widow 12, 14, 33, 34, 38, 39, 41, 42, 43.
Illegitimate 3.
Limitation (Act IX of 1871) 27, 110.
Maintenance 7.
Mortgage 89, 107.
Partition 12, 18, 22.
Res Judicata 31.
Sale (in Execution of Decree) 5.
Will 11.

Annuity.

See Contract 18.
Will 29, 41.

Appeal.

See Arbitration 3, 9, 15.
Bond 4.
Boundary Marks 1.
Contract 16.
Court Fees 1, 2.
Cumulative Sentences 2.
Execution of Decree 9.
Ex-Parte 1, 2, 3, 5.
High Court 16, 21, 24, 30, 31, 32.
Jurisdiction 36.
Land taken for Public Purposes 2.
Limitation 16.
,, (Act IX of 1871) 89.
Murder 4.

APPEAL (*continued*).

See Pauper Suit or Appeal 6.
Practice (Appeal).
,, (Review) 8, 13.
Registration 23, 28.
Rent 6.
Right of Appeal.
Sale (in Execution of Decree) 14.

Appearance.

1. When the plaintiff in a suit appears at the hearing, and the defendant does not appear, the proper procedure to follow is that prescribed by Act X of 1877 s. 100, whether the defendant has been summoned only to appear and answer the claim, or has in addition been summoned to attend and give evidence. I. L. R. 5 Cal. 353.

See Ex-Parte 7.
Personal Appearance.
Principal and Surety 12.
Rule Nisi 1.
Small Cause Court 20.

Appointment.

See Arbitration 7.
Hindoo Law (Inheritance and Succession) 20.
Service Tenure 8.
Will 49, 53.

Approver.

See Evidence (Corroborative) 1.

Arbitration.

1. No party to an agreement to refer to — can revoke his submission unless for good cause. (P. C.) 2 P. C. R. 164 (10 W. R. P. C. 51; 12 Moo. 112). *See also* 15 W. R. 331; 21 W. R. 395; 22 W. R. 522.

2. Procedure when the reference to — fixes no time for the award to be made. (P. C.) *Ib.*

3. A suit having been referred by the District Judge to —, the arbitrators made their award, and the Judge passed a decree in conformity therewith. That decree on appeal was set aside for irregularity, the award having been signed by the arbitrators separately, and ten days not having been allowed for objections, and the case was remanded with a view to these defects being cured. On remand one of the arbitrators in a letter to the Judge tendered his resignation, but was induced to withdraw it. The award was then properly signed, and, after objections heard, duly adjudicated upon under Act VIII of 1859 ss. 324 and 325. A decree was then passed: *Held* that no appeal lay from this decision to the High Court, and *à fortiori* none lay to the Privy Council. (P. C.) 3 P. C. R. 145 (23 W. R. 429).

4. *Held* that the arbitrator who first tendered and then withdrew his resignation, did not formally divest himself of his character of arbitrator, and was therefore not *functus officio* when he signed the award. (P. C.) *Ib.*

5. On an application under s. 327 to have an award filed in Court, it was held that the word "award" as used in the plaint must be taken to include the whole document scheduled to the plaint, *i.e.* the formal judgment as well as the decree; also that the earlier Sections of the Act are not incorporated into s. 327 as they are into s. 326, and that the words "sufficient cause" in s. 327 should be taken to comprehend any substantial objection which appears upon the face of the award, or is founded on the misconduct of the arbitrators, or on any miscarriage in the course of the proceedings, or upon any other ground which would be considered fatal to an award on an application to the Courts in England. (P. C.) 3 P. C. R. 342 (26 W. R. 10; L. R. 3 I. A. 209).

6. Both parties having agreed to the appointment of arbitrators to determine their rights under a will, the Privy Council refused to allow the appellant to take the objection that it was miscarriage on the part of the arbitrators to make their award without having had the whole of the will before them, after the award had been made and on the application to file it. (P. C.) *Ib.*

7. The making the submission to — a rule of the Court of Common Pleas, under the provisions of the Common Law Procedure Act 1854, has not the effect of depriving a party of his right to revoke, at any time before the award, the authority of arbitrators whom he has appointed: still less could it have any effect to prevent him from declining to appoint an arbitrator if he chooses to do so. (O. J.) I. L. R. 1 Cal. 42.

8. The plaintiff and defendant entered into partnership for the purpose of carrying on the cultivation and management of tea, on a tea estate at Darjeeling, of which they were the owners in certain shares. The deed was executed and registered in Calcutta, but both the parties resided out of the jurisdiction. The deed contained provisions for a reference to — in case of difference or dispute in any matters relating to the partnership. Differences having arisen, arbitrators were appointed in accordance with the clause in the deed. In the course of the — proceedings, one of the arbitrators received two telegrams purporting to be sent by the plaintiff and defendant to the arbitrators, the terms of which were "stay further proceedings, arrange matters here." The arbitrators subsequently made their award in Calcutta to the following effect: that the defendant's share in the partnership property should stand charged with the payment of a certain sum found to be due by him to the plaintiff, and that the defendant should execute a mortgage of his share to the plaintiff as security for such payment; that the partnership should be dissolved on certain terms, and that the tea garden at Darjeeling should be sold in Calcutta. In an application under Act VIII of 1859 s. 327 to file the award: *Held* (affirming the decision of the Court below) that the High Court at Calcutta had jurisdiction to file the award. S. 327 gives jurisdiction to file the award to any Court in which a suit in respect of the subject-matter of the award might be instituted. A suit in respect of the subject-matter of this award would not be a suit for land, but a suit in which, by reason of the execution of the deed of partnership in Calcutta, a part of the cause of action arose there; such a suit could, with leave, have been instituted in the High Court; that Court therefore had jurisdiction to file the award: *Held* also that the telegrams sent to the arbitrators did not amount to a revocation of their authority. (O. J. Ap.) I. L. R. 2 Cal. 445.

9. The plaintiff sought to file and to enforce a private award under Act VIII of 1859 s. 327. The defendant objected that he was no party to the award. The Court to which the plaintiff's application was made, after enquiry into the matter, overruled the objection, and directed that the award should be filed, but made no decree enforcing the award under the provisions of Chap. VI of the Act: *Held* that the order was not open to appeal as it did not operate as a decree. I. L. R. 1 All. 156.

10. Act VIII of 1859 s. 327 was intended to provide for those cases only in which the reference to — is admitted and an award has been made. Where the defendant denies referring any dispute to — or that an award has been made between himself and the plaintiff, sufficient cause is shown why the award should not be filed. The plaintiff should be left to bring a regular suit for the enforcement of the award. *Ib.*

11. The matters in dispute in a suit were, by the desire of the parties to the suit, referred to —. During the investigation of these matters by the arbitrators, the plaintiff offered to be bound by the oath of the defendant administered on the Koran. The defendant agreed to take such oath, and such oath was accordingly administered to him by the arbitrators and his evidence taken, and an award made based on the evidence so taken. On special appeal to the High Court by the plaintiff, he objected for the first time, the objection not having been taken in his memorandum of special appeal, that the arbitrators were not legally competent to administer such oath, and the evidence so taken could not form a valid basis of an award, and the award was therefore void. *Quære* whether the arbitrators had power to administer the oath, and whether the award

ARBITRATION (*continued*).

based on evidence given on such oath was void. I. L. R. 1 All. 535.

12. Matters in dispute were referred to the — of five persons, of whom four made their award on 27th August 1875. On 3rd September, the same arbitrators granted an application for rehearing. Before the matter was reheard, one of the four died, and an order striking off the application was made by two of the surviving arbitrators. On 21st February 1876, an application was made to the Court to have the award filed, which was opposed. The Court overruled the objection, and ordering the award to be filed gave a decree to the plaintiffs: *Held* that the award was not a valid and final award, that the decree passed thereon was not final, and that an appeal would lie. I. L. R. 3 Cal. 375.

13. The refusal to confirm an award of — is a judgment upon the whole subject-matter of the suit, from which judgment an appeal will lie. (O. J. Ap.) I. L. R. 4 Cal. 231.

14. Although an arbitrator is wrong in receiving and using as evidence a document which ought not to have been received, yet this is not a sufficient ground for the Judge refusing to confirm the award. (O. J. Ap.) *Ib.*

15. A decree passed by a Civil Court in accordance with an award of arbitrators made without the intervention of a Court of Justice under Act VIII of 1859 s. 327 is not subject to appeal. I. L. R. 3 Bom. 18.

16. Under the general law parties to suits may, if they are so minded, before issue joined, refer the matters in dispute between them to —, and after issue joined, with the leave of the Court. (F. B.) I. L. R. 2 All. 119.

17. Act XVIII of 1873 does not prohibit the parties to the suits mentioned therein from referring the matters in dispute between them in such suits to —. (F. B.) *Ib.*

18. Where therefore the parties to a suit under that Act agreed to refer the matters in dispute between them to —, after issues had been framed and evidence recorded, and applied to the Court to sanction such reference: *Held* that the Court was competent to grant such sanction, and on receiving the award to act on it. (F. B.) *Ib.*

19. K on the one part, and his creditors including C on the other, agreed in writing to refer to — the differences between them regarding the payment of his debts by K. The award compounded K's debts, and assigned his property to his creditors, and directed that K should dispose of such property for their benefit, and that, if he misappropriated any of the property, he should be personally liable for the loss sustained by the creditors on account of such misappropriation. C (amongst other creditors) signed the award; but the award was not signed by all the creditors. C received a dividend under the award. In a suit by C against K to recover a debt which had been compounded under the award, in which suit C alleged that several creditors had not signed the award, that some of them had sued K and recovered debts in spite of the award, that K had misappropriated some of the property, and that, if the plaintiff did not sue, there would be no assets left to satisfy his debt: *Held* that such suit was not maintainable; that Act IX of 1872 s. 65 did not apply; and that the — proceedings constituted, together with the award of the arbitrators, a good and sufficient contract, valid and effectual against the plaintiff and the other creditors who were parties thereto. I. L. R. 2 All. 173.

20. Plaintiff sued to recover certain moneys presented to him on his marriage, which he alleged the defendants had received and appropriated to their own use. Defendants denied that they had received such moneys, but admitted that such moneys had been credited by plaintiff's father to the firm in which they, together with plaintiff and plaintiff's father, were jointly interested, against a larger amount of moneys belonging to the firm which had been expended on plaintiff's marriage. The parties agreed to refer the matter in dispute between them to —, and to abide by the decision of the arbitrator. The arbitrator decided that plaintiff could not recover the moneys which he sued for and which had been credited to the firm of which he was a partner, as a larger sum had been expended on his marriage out of the funds of the firm. Plaintiff obtained the opinions of certain *pundits* to the effect that, under Hindoo law, gifts on marriage are regarded as separate acquisitions, and prayed that the Moonsiff would remit the award with these opinions to the arbitrator. The Moonsiff remitted the award with the opinions to the arbitrator with the request that he would consider them and return his opinion in writing within a certain period. The arbitrator having refused to act further, the Moonsiff proceeded to determine the suit, and gave plaintiff a decree on the ground that, in a joint Hindoo family, presents received on marriage do not fall into the common fund: *Held* that there being no illegality apparent on the face of the award, the Moonsiff was not justified, under Act VIII of 1859 ss. 323 and 324, in remitting the award, or in setting it aside and proceeding to determine the suit himself, but that he should have passed judgment in accordance with the award. (F. B.) I. L. R. 2 All. 181.

21. A Subordinate Judge, although invested with the jurisdiction of a Small Cause Court Judge, does not on that account become a Small Cause Court Judge, nor his Court such a Court within the meaning of Act X of 1877. He, therefore, has power, within the limits of his ordinary pecuniary jurisdiction, to receive and file awards of arbitrators under s. 525 of that Act. I. L. R. 3 Bom. 219.

22. Under Act X of 1877 ss. 523 and 525, parties to a suit as well as persons not engaged in litigation may agree to refer matters in dispute between them to private — without the intervention of the Court, and may apply to have the agreement filed; and the mere fact that a suit is pending with respect to the matters in dispute, is not of itself a sufficient reason to induce the Court to refuse to file the agreement. I. L. R. 4 Bom. 1. *See also* I. L. R. 6 Cal. 251.

23. A contract to sell goods contained the following clause:—"That any dispute arising hereafter shall be settled by the selling broker, whose decision shall be final." In a suit to recover damages for breach of the contract, the defendant pleaded that the dispute should have been referred to the decision of the selling broker, and that the suit was, therefore, barred under Act I of 1877 s. 21, the latter clause of which provides that "save as provided by the Code of Civil Procedure no contract to refer a controversy to — shall be specifically enforced; but if any person, who has made such a contract, and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit:" *Held* that before that section could be relied upon, it must be shown that the plaintiff had refused to refer to —; and that the filing of the plaint was not such a refusal. (O. J.) I. L. R. 5 Cal. 498.

24. Where, in a suit for the filing of an award made on a private reference to —, the Court of first instance, holding that there was no reason to remit such award to the reconsideration of the arbitrator, under the provisions of Act X of 1877 s. 520, or to set it aside under s. 521, did not proceed to give judgment according to such award followed by a decree, but merely directed that such award should be filed: *Held* that its order was not appealable as a decree, or as an order. I. L. R. 2 All. 471.

25. Notwithstanding that Act X of 1877 Chap. XXXVII (in reference to —) does not refer specially to suits brought under Act X of 1859, yet if both parties to a suit for a kubooleut brought under the latter Act agree to refer the matters in dispute between them to certain arbitrators named by them, and file a joint petition in the Court of the Deputy Collector, stating that they had so agreed, and praying that the case may be referred to such arbitrators, neither of them will be afterwards at liberty to object to a decree made, embodying the award of the arbitrators, on the ground that the reference to — was irregular, and not warranted by any of the provisions of Act X of 1877. I. L. R. 6 Cal. 251.

26. When a case has been so referred, the arbitrators are at liberty to determine what appears to them to be a fair and equitable rate of rent, and notwithstanding the amount so found is less than that demanded by the plaintiff in his plaint, the Court out of which the reference issued is not at liberty on that ground to dismiss the suit, but is bound to order the defendant (with the alternative of eviction) to execute a kubooleut in favor of the plaintiff, engaging himself to pay rent to the plaintiff at the rate determined by the arbitrators to be fair and equitable. *Ib.*

See Contract 7, 8, 9, 10, 10A.
Estoppel 17.
Mortgage 100.

ARBITRATION (*continued*).

See Partition 5.
Sale (in Execution of Decree) 1.
Reversioner 3.
Will 61.

Armenian.

See Execution of Decree 21.

Arms.

1. Under Act XXXI of 1860 s. 32 cl. 6, a sentence of fine only, or of imprisonment only, is a legal sentence for the unlawful possession of —. (F. B. Cr.) I. L. R. 1 Bom. 308.

See Unlawful Assembly 1.

Arrest.

1. In an appeal under Act X of 1872 s. 272, the High Court has no power to order the accused to be arrested pending the appeal. (Cr.) I. L. R. 1 Cal. 281. *See also* I. L. R. 2 All. 386. *But see* (F. B.) I. L. R. 2 All. 340.

2. A suit to recover damages on account of injuries caused by an — in accordance with the decree of a competent Court can only be sustained under special circumstances; *i.e.* plaintiff must show (1) that the original action out of which the alleged injury arose was decided in her favor; (2) that the — was procured without reasonable and probable cause; and (3) that the injury sustained was something other than an injury which has been or might have been compensated for by an award of the costs of the suit, *e.g.* that he has suffered "some collateral wrong." I. L. R. 4 Cal. 583.

3. In suits like the above, where a plaintiff must show an absence of reasonable and probable cause, malice is not alone sufficient to entitle him to a verdict. *Ib.*

4. The general rule that a party to a suit is protected from — upon any civil process, while going to the place of trial, while attending there for the purpose of the cause, and while returning home, applies to a defendant to a suit under the summary procedure sections of Act X of 1877 who has not obtained leave to appear and defend, and who, therefore, cannot be heard at the trial. Questions as to the privilege of exemption from —, in the case of persons arrested under writs issued from the Small Cause Courts in Calcutta, must be governed by the English law, and not by s. 642 of the above Act. It is not a deviation sufficient to forfeit the privilege if the *shortest* road home is deviated from and a less crowded and more convenient road adopted. (O. J.) I. L. R. 5 Cal. 106.

See Deccan Agriculturists Relief 5.
Escape 1.
Ex-Parte 6.
Gambling 3.
High Court 20.
Insolvency 14.
Limitation (Act IX of 1871) 83.
Principal and Surety 12.
Small Cause Court 1, 16.

Artisan.

1. A washerman is not an — within the meaning of Act III of 1871 (Madras). I. L. R. 1 Mad. 174.

See Partnership 11.

Ascetics.

See Endowment 1.

Assam.

See Right of Occupancy 13.

Assessment.

See Building Lease 1, 2, 3.
Churs 19.
Enam 4.
Enhancement 26, 29.
Hindoo Widow 50.
Julkur 3.
Jurisdiction 53.
Kanara 1.
Limitation (Act IX of 1871) 29.
Meerasee 6.
Mesne Profits 12.
Municipal 1.
Onus Probandi 1, 4.

Assessors.

See High Court 28.
Jury 8.
Murder 5.

Assignment.

1. Letters of —. *See* Stamp Duty 1.

2. Of Decree. *See* Attachment 21; Execution of Decree 35, 46; Registration 17.

3. Upon sale in execution of a decree, the property in the thing sold passes to the purchaser; and there is nothing in either the Hindoo or the English law which debars a third person from taking an — of such property from the auction-purchaser, albeit it has not been reduced into possession by him. I. L. R. 1 Bom. 500.

4. A zemindar hypothecated certain villages comprised in his zemindaree as security for a debt, at the same time leasing the said villages to the mortgagee at an annual rent, the amount of which was to be, as it fell due, credited in liquidation of the debt: *Held* that the plaintiff, who was the assignee of the hypothecation deed and the lease, was not a "landholder" within the meaning of Act VIII of 1865 (Madras). I. L. R. 1 Mad. 49.

5. Where a promissory note made payable simply to the payee without the addition of the words order or bearer, and therefore not negotiable, was assigned to a third person: *Held* that the assignee could sue upon such note, a chose in action being by the law of India assignable; and that the assignee could sue in the Courts of India in his own name. I. L. R. 1 All. 732.

6. Of legacy. *See* Husband and Wife 10, 11; Will 44.

7. Equitable — of goods. *See* Hoondee 11.

8. Of right of suit. *See* Limitation (Act XV of 1877) 31.

9. Of lease. *See* Ferry 3; Limitation (Act XV of 1877) 33.

10. Assignee of heir. *See* Partition 30.

See Bond 4.
Conveyance (Transfer and Assignment).
Hereditary Office 9.
Insolvency 16.
Registration 25, 40.
Stamp Duty 12.
Vendor and Purchaser 7.
Will 26, 55.

Asura.

See Marriage 10, 11.

Attached Property.

1. In a suit brought by plaintiff to establish his right to certain immoveable property sold in execution of a decree, under Act VIII of 1859 s. 246, disallowing the claim of the objector represented by the defendant, and adjudging the — to be that of the judgment-debtor represented by the plaintiff, the said order not having been set aside in a regular suit: *Held* that the order passed under s. 246, unless overruled in a regular suit brought within the statutory period, is binding on all persons who are parties to it, and is conclusive. (F. B.) I. L. R. 1 All. 381, *followed* by *Ib.* 541. *See* I. L. R. 2 All. 455.

2. Where certain immoveable property having been attached, the execution case was subsequently struck off the file, and the judgment-debtor applied for attachment of the same property: *Held*, looking to the particular circumstances of the case, that a private alienation of the property after the date of such application but before attachment was not void under Act VIII of 1859 s. 240. I. L. R. 1 All. 616.

3. In a suit to set aside an order for the removal of an attachment granted under Act VIII of 1859 s. 246, and to obtain a declaration that the — belonged to the judgment-debtor and was liable in execution: *Held* that inasmuch as neither the decree, nor the plaint on which it was founded, established or sought to establish any claim against a specific lien upon the immoveable property, the subject of the present suit, it was perfectly competent for the judgment-debtor, at any time previously to an attachment of the property, to alienate it, and the question for decision as to that property was whether the debtor had alienated it. Until attachment the creditor has no right to interfere with the power of his debtor to deal with his property. I. L. R. 4 Bom. 70.

See Attachment 6.
Court Fees 1, 12.
Gift 14.
Guardian and Minor 9.
Hereditary Office 8, 9.
Limitation 20.
,, (Act XIV of 1859) 13.
,, (Act IX of 1871) 77.
Manager 5.
Partnership 18.
Registration 51.
Sale (for Arrears of Revenue) 1, 2.
Small Cause Court 27.
Value of Suit or Appeal 8.

Attachment.

1. Under Act VIII of 1859 the process of — and the order for sale may be distinct and separate, and there may be complete execution of a decree under an — without an order for sale. (P. C.) 2 P. C. R. 560 (17 W. R. 289; 10 B. L. R. 214; 14 Moo. 529.)

2. To invalidate an — on the ground that no copy of the decree was sent, it would be necessary to prove non-transmission. (P.C.) *Ib.*

3. The prohibition against alienation which is involved in an —, avoids the conveyance only as against the execution-creditor, or some person entitled to claim under him. (P.C.) 2 P. C. R. 873 (20 W. R. 133; 12 B. L. R. 411.)

4. A conveyance executed by the judgment-debtor after one — has been permanently struck off and before a new — is issued, is valid. (P.C.) *Ib.*

5. When the party prosecuting the decree is compelled to take out another execution, his title should be presumed to date from the second —. (P. C.) *Ib.* *See also* 25 W. R. 513.

6. The appointment of a surburakar or manager by a Court does not supersede an —. (P. C.) L. R. 1 I. A. 89 (12 B. L. R. 297).

7. Although, when property has been attached before judgment, it is usual to re-attach it after judgment, that proceeding implies no abandonment of the first — which gives the priority of lien. Accordingly, where there was a valid and substantial — at the date of a mortgage, that alienation, unless it can be shown not to fall within Act VIII of 1859 s. 240, was null and void as against the attaching creditor and those who claim under him. (P. C.) 3 P. C. R. 755 (L. R. 7 I. A. 157; I. L. R. 6 Cal. 129).

8. The objection as to the non-observance of the formalities enjoined by s. 239 was not allowed to be taken for the first time upon appeal before the Privy Council, it involving a question of fact. (P. C.) *Ib.*

9. *Quære.* Whether, under the circumstances of this case, it was not for the plaintiff, who was seeking to oust defendant from possession, to prove the non-observance of the formalities in question, rather than for the defendant, who was in possession, to prove affirmatively that they had been observed. (P. C.) *Ib.*

10. The meaning of Act VII of 1870 s. 7 cl. 8 is that a person suing to set aside an — of land shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession of the land. The above ruling how applied to a suit for setting aside a summary — under Act I of 1865 (Bombay) with reference to ss. 35 and 48. I. L. R. 1 Bom. 352.

The language of Act VII of 1870 s. 7 cl. 8 is not limited to suits to set aside any special kinds of — on land. It is large enough to include suits brought under Act VIII of 1859 s. 246 to set aside an — on land, as well as other suits brought independently of that section. (F. B.) I. L. R. 4 Bom. 515.

The term "land" in the above clause does not include a house. (F. B.) *Ib.*

11. A and B were entitled to receive annually and for ever a specified amount by way of malikhana rights from the Collector as compensation for their extinguished rights in lakheraj lands. In execution of a decree, C, on 13th September, purported to attach, under Act VIII of 1859 s. 237, A's share in such specified amount. Subsequent to this —, viz., on 23rd September, 1873, A and B mortgaged their rights to the plaintiff. In a suit brought by him against A, B, and C: *Held* that — under s. 237 was not applicable to a right to receive money for ever; that such an — is only good so far as it relates to any specific amount, which may be set forth in the request to the officer in whose hands the moneys are, as being then payable or likely to become payable; and that the — in question was therefore invalid. *Semble*, the attaching creditor should have proceeded under s. 235 or s. 236. In either of such cases, the defendant, the person to whom the money was payable, would be entitled to notice that he was not at liberty to alienate his rights. I. L. R. 3 Cal. 414.

12. Under Act X of 1877 s. 268, bonds cannot be sold till the end of six months from the date of —. I. L. R. 2 Bom. 558.

13. Certain land was attached in execution of a decree as required by Act VIII of 1859 s. 235, but a copy of the order of — was not, as required by s. 239, fixed up in a conspicuous or any part of the Court-house of the Court executing the decree, nor was it sent to or fixed up in the office of the Collector of the district in which the land was situated. Subsequently to the — of the land, the judgment-debtor privately alienated it by sale: *Held* that, as the — had not been made known as prescribed by law, s. 240 did not apply, and the sale was not null and void. I. L. R. 2 All. 58.

14. Certain unthreshed rice belonging to plaintiff was wrongfully attached by defendants under a money-decree obtained by them against a third party. The — had been made under a warrant which specified the rice in question and which had been issued upon a *durkhast* presented by defendants praying for the — of this particular rice as their judgment-debtor's property. The rice, while in the custody of a bailiff of the Court Nazir in the place where it had been attached, was clandestinely threshed and carried off by thieves who left the straw. In a suit brought by plaintiff to recover the value of the unthreshed rice from the defendants, both the Lower Courts dismissed the plaintiff's claim on the ground that the theft was not the immediate or probable result of the —, and that the conduct of the defendants had not in any way conduced to the loss of the rice: *Held* by the High Court, reversing the decrees of the Lower Courts, that the defendants were liable. When the wrongful seizure was made at the instance of the defendants, the plaintiff's cause of action

ATTACHMENT (*continued*).

was complete, and was independent of the subsequent occurrence. The theft might have rendered the defendants unable to restore the rice *in specie*, but could not purge, and was no satisfaction of, the previous trespass, which rendered the defendants liable for the full value of the rice. I. L. R. 3 Bom. 74.

15. The measure of damages in the above case should be the value of the rice as it stood at the time of the wrongful — made at the instance of the defendants. If, however, the plaintiff accepted the straw left by the thieves, the value of the straw as it stood at the time of such acceptance should be deducted from the value of the straw and rice when unsevered from each other. *Ib.*

16. A bailiff or *nazir* has authority to break open the door of a shop in order to execute a writ of —, the previously existing law on the subject not being altered by Act X of 1877 s. 271. I. L. R. 3 Bom. 89.

17. A judgment-debtor in execution of his decree attached certain property belonging to his judgment-debtor while Act VIII of 1859 was in force. This property was ultimately sold on 9th January 1879, *i.e.* after Act X of 1877 came into operation. Two days before the sale another judgment-creditor applied to have his decree satisfied out of the same property by a rateable distribution of the proceeds which might be realized: *Held* that the prior attaching creditor by his — under Act VIII of 1859 acquired, under s. 270 of that Act, a right to have his decree first satisfied in full, and that he was not deprived of this right by the change in the law introduced by Act X of 1877 s. 295. I. L. R. 3 Bom. 217.

18. A judgment-creditor without a specific lien (*i.e.* a mortgage or other direct charge or incumbrance) has not any *à priori* right to debar his debtor from parting with his immoveable property until it is attached in due course of law. I. L. R. 4 Bom. 70.

19. A decree-holder by a prohibitory order issued under Act X of 1877 s. 268 attached a debt due to his judgment-debtor. This person served with the order applied under s. 278, to have the — removed: *Held* that the application could not be entertained under s. 278, that section having no application to the case; but that before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s. 287, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property, of which sale is sought, is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale. I. L. R. 4 Bom. 323.

20. An objection was made to the — of certain property in the execution of a decree by the judgment-debtor, on the ground that such property was in his possession, not as his own property, but on account of an endowment. This objection was one of the nature to be dealt with under Act X of 1877 s. 278 and the following sections. The Court executing the decree made an order against the decree-holder releasing the property from —: *Held* that such order was not appealable, the fact that the objection was made by the judgment-debtor notwithstanding, and the decree-holder's proper remedy was to institute a suit, under Act X of 1877 s. 283. I. L. R. 2 All. 752.

21. A brought a suit against B which was dismissed with costs. A subsequently brought a suit against C, in which he obtained an *ex-parte* decree, and assigned his interest under the decree to D and E. D and E neglected to have their names substituted for that of A on the record. C applied for and obtained an order, setting aside the *ex-parte* decree, and allowing him to come in and defend the suit on deposit in Court of the sum sued for. At the rehearing, the suit was again determined in favor of A. B thereupon, in execution of his decree for costs, attached the moneys in the hands of the Court in the suit of A against C. D and E obtained an *ad interim* injunction restraining B from meddling with the money, and put in their claim under the assignment: *Held* that the incomplete equitable title of D and E could not prevail against the right of B, the attaching creditor. (O. J.) I. L. R. 5 Cal. 869.

See Ancestral Property 3.

See **Attached Property.**
Compensation 1.
Court Fees 13, 14, 16, 17, 18, 19.
Cross Decrees 2.
Deccan Agriculturists Relief 5.
Declaratory Decree 18.
Distraint 1.
Endowment 27.
Execution of Decree 2, 14, 19, 24, 36, 40.
Hereditary Office 8, 9.
Khas Mehal 1.
Limitation (Act IX of 1871) 18, 25, 35, 56, 57.
Mortgage 46, 79, 119, 130.
Partnership 16, 17, 18.
Pension 4.
Principal and Surety 9, 10.
Putnee 15.
Receiver 1, 2.
Registration 51.
Sale 4.
Sale (in Execution of Decree) 1, 8, 10, 27, 46, 48, 50.
Sheriff 4.
Small Cause Court 15, 32.
Under Tenure 3.
Will 49.

Attempt.

See False Charge 2.
Illegal Gratification 2, 3.
Limitation (Act IX of 1871) 69.
Marriage 9.

Attorney.

See Attorney and Client.
High Court 19.
Solicitor.

Attorney and Client.

1. In a suit by an attorney against a client to recover the sum due on certain mortgages by sale of the mortgaged property pledged as security for advances made by the plaintiff to the defendant for whom the plaintiff was acting in certain litigation before the High Court: *Held* that the defendant, notwithstanding his having previously declined the plaintiff's offer to tax the bills, and notwithstanding the delay that had taken place, was entitled (having regard to the relation between the parties, and to the fact that a portion of the costs was incurred in suits then pending) to have the bills taxed and to reopen the account; and that under the circumstances the Court would not infer acquiescence from the delay on the part of the defendant: *Held* also that there is no rule which prevents an attorney from taking security or otherwise arranging with his client for the payment of costs which have actually become due, and that the plaintiff was entitled to sale of the property, to accumulations of interest prior to the date of the third mortgage calculated by allowing annual rests to interest at 10 per cent. as being a fair rate for the client to have undertaken to pay when the mortgages were executed, and to interest on his costs. (O. J. Ap.) I. L. R. 3 Cal. 473.

2. An agreement, executed by a client to his vakeel, after the latter had accepted a *vakalutnamah* to act for the former in a certain suit, whereby the client bound himself to pay to the vakeel, in the event of his conducting the suit to a successful termination, a certain sum in addition to the vakeel's full fees, was held to be *nudum factum*, and a suit founded upon it dismissed as unsustainable. I. L. R. 2 Bom. 362.

ATTORNEY AND CLIENT (*continued*).

3. To be privileged under Act I of 1872 s. 126 a communication by a party to his attorney must be of a confidential or private nature. (O. J. Ap.) I. L. R. 3 Bom. 91.

4. Where defendants at an interview, at which the plaintiff was present, admitted their partnership to their attorney who was then also acting as attorney for the plaintiff: *Held* that the attorney was not precluded by Act I of 1872 s. 126 from giving evidence of this admission to him, (1) because the defendant's statements, having been made in presence and hearing of the plaintiff, could not be regarded as confidential or private, and (2) because those statements did not appear to have been made to the attorney exclusively in his character of attorney for the defendants but to have been addressed to him also as attorney for the plaintiff. (O. J. Ap.) *Ib.*

5. P and W were solicitors for the plaintiff in this suit from its commencement. When the case was about to appear in the list for hearing, P and W wrote to the plaintiff, requesting her to send them an advance of Rs. 1,000, to enable them to deliver briefs to counsel. They received no reply from the plaintiff, who afterwards obtained leave to sue as a pauper, and appeared by other solicitors. P and W were subsequently served with a subpœna to produce, at the hearing, certain translations and other documents relating to the plaintiff's case which had remained in their possession, and upon which they claimed a lien in respect of costs due to them by the plaintiff: *Held* that P and W could not be compelled to produce. A solicitor who is discharged by his client, holds the papers entrusted to him subject to his lien for costs, and the plaintiff by her conduct had discharged P and W from being her solicitors. (O. J.) I. L. R. 4 Bom. 353.

6. A solicitor has the same lien upon translations as he has upon other documents, and the fact that they have been made by the Court's interpreters, makes no difference. Having got the work done, and paid for it, he need not part with such translations, or produce them, except on terms which will secure him against fraud. (O. J.) *Ib.*

7. Statements laid by clients before Counsel for the purpose of obtaining legal advice, are privileged. (O. J.) I. L. R. 4 Bom. 576.

8. Where a firm of attorneys dissolved partnership after the death of a client, there being at the time papers and documents belonging to the client in their hands, and a debt due in respect of costs from the client to them: *Held* that the dissolution of partnership operated as a discharge by the firm, and that the attorneys were not entitled to retain the papers and documents until their costs were paid, but were bound to hand them over to the administrator of the client. (O. J.) I. L. R. 6 Cal. 1.

9. Act IX of 1872 s. 171 does not give an attorney an absolute lien. S. 1 provides that nothing in the Act contained shall affect any usage or custom of trade; and, as no part of the English law is inconsistent with s. 171, cases arising in this country must be governed by the English authorities. According to those authorities, while the relation of — exists, the client may either continue to employ the attorney or change him. When he claims to do the latter, the attorney being willing to act, he cannot ask the attorney to give up papers in his possession without first satisfying the lien. The attorney has his option; he may, if he chooses, either go on acting for his client, or cease to act; if he adopt the latter course, he must give up the papers. On the death of the client, his representative stands in exactly the same position with respect to the attorney as the client did. (O. J.) *Ib.*

10. An attorney who has acted for a party to a suit, and has discharged himself, cannot afterwards act for the opposite party; and the Court will restrain him from doing so on an application made for that purpose. (O. J.) I. L. R. 6 Cal. 79.

11. Plaintiffs resided in England and sued the defendant in Bombay for specific performance of an agreement to purchase certain premises, which agreement had been made on behalf of plaintiffs by S, their agent in Bombay. Defendant pleaded that, by the terms of the agreement, it was provided that the deed of assignment should contain a covenant by the three plaintiffs to indemnify defendant against any claims upon the premises that might be made at any time by or on behalf of the representatives of one N. Defendant's solicitor P prepared a draft assignment which contained this covenant, and sent it to plaintiff's solicitor W for approval. On 19th March 1880 W called upon P and informed him that M, the third plaintiff, refused to sign any deed which contained the above covenant. At this interview W read to P certain portions of a letter written with reference to the proposed deed by McG and Co. (solicitors for the first two plaintiffs) to V, the solicitor of the third plaintiff, and of another letter written by V to his client the third plaintiff. Defendant called upon plaintiffs to produce these letters for inspection: *Held* that the letters were privileged, and that the fact that portions of them had been read to defendant's solicitor was no waiver of the privilege as regarded the parts which were not read. (O. J.) I. L. R. 4 Bom. 631.

See Limitation (Act IX of 1871) 25, 28.

Auction-Purchaser (Execution-Sale).

1. Whatever may have been the nature of the debt, the — cannot be taken to have acquired by the execution-sale more than the right, title, and interest of the judgment-debtor. Where a son sued the purchaser at a sale in execution of a decree for a bond-debt incurred by the father, on the allegation that the debt was incurred without justifiable necessity: *Held* that if the purchaser had sought to go further, and to enforce his debt against the whole property and the co-sharers therein who were not parties to the bond, he ought to have framed his suit accordingly and have made those co-sharers parties to it; whereas, by the proceedings which he had taken, he could not get more than what was seized and sold in execution, *viz.* the right, title, and interest of the father. (P. C.) 3 P. C. R. 467 (L. R. 4 I. A. 247; I. L. R. 3 Cal. 198).

So also in a suit to set aside an execution-sale of one half of certain lands on the ground that they formed plaintiff's share, that he was a minor when his father incurred the debt, and that his share was not liable for debts incurred by his father: *Held* that as the debt was the father's personal debt, and the decree was against him personally, only his rights and interests could be sold, and nothing beyond his rights would pass to the —. I. L. R. 1 Mad. 354.

Also where plaintiffs, minors, by their mother, or next friend and guardian, sued defendants, sons of one S D, under Act VIII of 1859 s. 230, to recover a 4-5th share of a house and lands of which plaintiffs were dispossessed by the defendants in the execution of a decree in a suit No. 33 of 1872: *Held* (following the above leading case) that these properties were not so liable; that under the decree and execution proceedings in a suit No. 28 of 1871, merely the rights of S D were sold; that nothing in that litigation indicated that it was intended to enforce the debt against the whole property as a debt due from the family; and that the decision in the partition suit (No. 33 of 1872) covered only what was then in question, and could not be viewed as authorising the attachment now in question in execution of that decree. The authorities reviewed on the question whether, in execution of a decree, the interests of any but those who were parties to it, or those who, on the death of such parties, became their representatives in interest, could be affected. (F. B.) I. L. R. 1 Mad. 358.

2. A decree-holder fraudulently caused the sale in execution of his decree of certain immoveable property belonging to a minor. The minor brought a suit for a declaration that such sale was invalid, and obtained possession of the property from the —, who sued the decree-holder to recover his purchase-money, and the costs incurred by him in defending the suit brought by the minor. It was found that the — was not a party to or cognizant of the fraud on the part of the decree-holder: *Held* that neither the mere fact that the — knew that he was purchasing the property of a minor, nor the mere fact that he did not ascertain whether or not the sale was justified by the terms of the decree, disentitled him to recover the purchase-money from the decree-holder; and that being innocent of fraud and having purchased in the *bonâ fide* belief that the property of the minor was saleable, he was entitled to recover the purchase-money; but that he could not recover the costs incurred by him in defending the suit brought by the minor, it being a suit which he ought not to have defended. (F. B.) I. L. R. 1 All. 568.

AUCTION-PURCHASE (*continued*).

3. Certain immoveable property was sold on the same day in the execution of two decrees, one of which enforced a charge upon such property created in 1864, and the other a charge created in 1867: *Held* that the purchaser of such property at the sale in execution of the decree, which enforced the earlier charge, was entitled to the possession of such property in preference to the purchaser of it at the sale in the execution of the decree which enforced the latter charge, notwithstanding the latter had obtained possession of the property in virtue of his purchase. I. L. R. 2 All. 698.

See Ancestral Property 1, 2, 3, 10, 12.
Assignment 3.
Attached Property 1.
Benamee 12, 14, 15, 16.
Contribution 1.
Conveyance (Transfer and Assignment) 2.
Declaratory Decree 18.
Ejectment 3.
Enhancement 8.
High Court 22.
Hindoo Law (Coparcenary) 7, 12, 18, 21.
„ Widow 16, 35.
Joinder of Causes of Action 2.
Limitation 34.
„ (Act XV of 1877) 10.
Mahomedan Law 8.
Money Decree 1, 2, 3.
Mortgage 11, 45, 46, 47, 55, 56, 78, 79, 91, 92, 94, 100, 101, 102, 103, 104, 105, 116, 117.
Onus Probandi 3.
Practice (Review) 4.
Puttee 2.
Res Judicata 12, 19, 31.
Sale (for Arrears of Revenue) 6.
„ (in Execution of Decree) 9, 11, 14, 17, 23, 24, 25, 26, 29, 35, 38, 39, 41, 45.
Sheriff 5.
Small Cause Court 7.
Under Tenure 3.
Vendor and Purchaser 7.

Auction-Purchaser (Revenue Sale).

See Enhancement 2, 3, 24, 27.
Ghatwals 3.
Insolvency 3.
Julkur 2.
Jurisdiction 1.
Limitation 33.
Mortgage 88.
Onus Probandi 3.
Sale (for Arrears of Revenue) 6.
Service Tenure 3.
Talook 1, 2.

Average.

1. Particular average. *See* Insurance 1.

Badshapore.

Settlement of the claim set up by Dyce Sombre's representatives to the — estate consequent upon its resumption by the British Government on the death of Begum Sumroo. (P. C.) 2 P. C. R. 628 (18 W. R. 349; 12 B. L. R. 120; L. R. I. A. Sup. 10).

Bahrulia Clan.

See Hindoo Law (Inheritance and Succession) 30.

Bail.

1. The Court of Sessions has no power, under Act X of 1872 s. 390, to admit a convicted person to —, a *convicted* person not being an *accused* person within the meaning of that section. (F. B. Cr.) I. L. R. 1 All. 151.

Bailiff.

See Attachment 14, 16.

Bailment.

1. G went to plaintiff's place of business in Calcutta, and representing to him that he wanted some jewellery on inspection and would purchase it if he did not return within ten days, obtained from plaintiff a quantity of jewellery, depositing as security Rs. 2000 with plaintiff. G, having thus obtained the jewellery, took it to K at his residence, which was out of the local limits of the jurisdiction of the High Court, and pledged the jewellery to K for Rs. 6000. In a suit brought against G and K to recover the jewellery or its value, G did not appear, and K alone defended the suit: *Held* that it being, with reference to Act IX of 1872 s. 178, an essential element in the plaintiff's case that the jewellery had been obtained from plaintiff by fraud in Calcutta, part of the cause of action arose in Calcutta so as to enable the Court, leave having been obtained under cl. 12 of the Letters Patent, to entertain the suit against him. (O. J.) I. L. R. 3 Cal. 264.

2. *Held* also that plaintiff was entitled to recover the jewellery from K under Act IX of 1872 s. 178, G having obtained it from plaintiff by an offence or fraud within the meaning of that section. (O. J.) *Ib.*

3. A servant entrusted by his mistress with the custody of goods, pawned them during her absence. The mistress sued *in trover* for the goods: *Held* that the custody of the servant was not "possession" within the meaning of Act IX of 1872 s. 178; and that if he was to be regarded as having taken the goods into his possession for the purpose of pawning them, the case came within the second proviso to that section, and that accordingly the action would lie. (O. J.) I. L. R. 4 Cal. 497.

4. The agent of the plaintiff delivered to the Treasury Officer at Meerut nine Government promissory notes, aggregating Rs. 48,000 in value, in order that such notes might be transmitted to the Public Debt Office at Calcutta for cancellation and consolidation into a single note for Rs. 48,000, having previously endorsed the plaintiff's name on such notes at the request of a subordinate of the Treasury officer, and received a receipt for such notes under the hand of the Treasury officer. Owing partly to such endorsements and partly to the negligence of the Treasury officer, such subordinate was enabled to misappropriate and negotiate two of such notes, aggregating Rs. 12,000 in value. The remaining seven of such notes were despatched to Calcutta, and a consolidated note for Rs. 31,200 was returned and delivered to the plaintiff, when the misappropriation of the two notes was discovered. The plaintiff sued Government, claiming "that it might be directed to make restitution of the two notes or to deliver two other notes of equal value or their value in cash" with interest. On behalf of Government it was contended that it was not liable to the plaintiff's claim, inasmuch as the plaintiff, by his agent, had contributed to the loss of the two notes, and a master was not liable in damages for loss or injury sustained through the fraud or dishonesty of his servant without the scope of his employment: *Held* that the two notes not having been delivered to the Treasury officer as a bailee, but having been surrendered, the receipt given by that officer must be regarded as an undertaking on the part of Government to deliver a consolidated note for Rs. 48,000 in due course, and the plaintiff's suit was in reality one for damages on account of the refusal of Government to

BAILMENT (*continued*).

discharge its obligation, the measure of those damages being the amount by which the note for Rs. 31,200 fell short of Rs. 48,000 with interest, and such being the suit, the contention of Government was not any answer to it. I. L. R. 2 All. 756.

5. In a suit for damages for loss of passenger's luggage by the wreck of a ship belonging to a foreign company, it appeared that the plaintiff had received a ticket in the French language, which on its face stated that it ought to be signed by the passenger, and that it was issued subject to certain conditions on the back. These conditions, among other things, stated that the company would not be responsible for loss or damages arising from accidents or risks of the sea; that the ticket was delivered subject to the conditions that certain articles of a specified nature should be made the subject of a special declaration, in default of which the company would not be liable; that the company would not be answerable for unregistered luggage; and that luggage might be insured at any of the company's offices. It was not stated where registration of luggage might be effected. The ticket was not signed by the plaintiff. The plaintiff alleged that he did not understand the French language, and that the conditions had not been explained to him by any person: *Held* that the company being a foreign company were not common carriers; that the plaintiff was bound by the clauses and conditions on the back of the passage-ticket; that none of the conditions had the effect of relieving the company from the consequences of their own negligence; that in order to establish a defence upon the ground that the plaintiff's luggage was not registered, it was necessary for the defendants to prove, not only that the plaintiff was bound by the conditions, but also that they were ready and willing to register the plaintiff's luggage, and that the plaintiff did not in fact register it; that as the contract was made in Calcutta, the defendants were bound by the provisions of Act IX of 1872 s. 151. (O. J.) I. L. R. 6 Cal. 227.

See Insolvency 4.
Railway 6, 7.

Banker.

1. Where the fact of payments by a banking firm is distinctly put in issue, the books of the firm being at most corroborative evidence, the mere general statement of the — that his books were correctly kept is not sufficient to discharge the burden of proof that lies upon him, particularly if he has the means of producing much better evidence. (P. C.) 3 P. C. R. 132 (23 W. R. 390).

See Bank of Bengal.
Bill of Exchange 3.
Cheque.
Hoondee 2.
Insolvency 22.
Stamp Duty 13.

Bank of Bengal.

1. Right of — to refuse, under Act XI of 1876 ss. 17 and 21, to register a transfer of shares. (O. J. Ap.) I. L. R. 3 Cal. 392.

See Bill of Exchange 4.
Stolen Property 2, 3.

Bankrupt.

See Hoondee 4, 5.
Misrepresentation 1.

Barrister.

1. Where the Privy Council reversed an order of a High Court suspending an advocate from practice. (P. C.) 2 P. C. R. 505 (17 W. R. 35; 10 B. L. R. 88; 14 Moo. 267).

See Counsel.

Benamee.

1. Where a purchase of real property is made by a Hindoo in the name of one of his sons, the presumption of Hindoo law is that it is a — purchase, and the *onus* is on the party in whose name it was purchased to prove his sole title to the legal and beneficial interest in such property. (P. C.) 2 P. C. R. 13 (6 Moo. 53).

2. The purchase of a talook in Bengal by a Hindoo in his eldest son's name, though the conveyance was in the English form of lease and release, was held to be —; the son being declared a trustee for the father, and the talook part of the father's estate. (P. C.) *Ib.*

So with regard to an idol; the property purchased is not the property of the idol, but of the person who purchased it. (P. C.) 2 P. C. R. 869 (20 W. R. 95).

3. The habit of holding land —, though inveterate in India, does not justify the Courts in making every presumption against apparent ownership. (P. C.) 2 P. C. R. 59 (8 W. R. P. C. 3; 11 Moo. 551).

4. The real criterion in an alleged — transaction is to consider from what source the purchase-money came. The presumption is that a purchase made with A's money in the name of B is for the benefit of A; and it cannot be presumed from the purchase by a father, whether Mahomedan or Hindoo, in the name of his son, that there was an advancement made in favor of that son. (P. C.) 2 P. C. R. 279 (13 W. R. P. C. 1; 4 B. L. R. P. C. 1; 13 Moo. 232).

As to the criterion. 15 W. R. 12. *See also* (P. C.) 2 P. C. R. 13 (6 Moo. 53).

5. The law as to — conveyances should be considered conclusively settled by the foregoing decision (2 P. C. R. 13; 6 Moo. 53), whether as regards Hindoos or Mahomedans; but that decision was held not applicable where a father had purchased property with his own funds, but had the conveyance drawn up in his son's name with a view to affect the interests of his daughters, and to vary the rule of succession between sons and daughters in his family. (P. C.) 2 P. C. R. 343 (14 W. R. P. C. 14; 5 B. L. R. 578; 13 Moo. 395). *See also* 16 W. R. 186.

6. Plaintiff sued for recovery of certain property on the allegation that, though the property was purchased by his adoptive mother (A) — in the name of B, she purchased it out of her own separate income, and that plaintiff, as her heir, was entitled to it on her death: *Held* that the *onus* was on plaintiff to prove his title; and that even if he proved that A purchased the property with her own money, it did not follow that the purchase was —. (P. C.) 2 P. C. R. 377 (15 W. R. P. C. 7; 6 B. L. R. 303).

7. — purchases in India, not having been declared to be illegal, must be recognized and have effect given to them by the Courts. There is nothing in Act VIII of 1859 s. 260, taken with or without ss. 259 and 261 to 266, prohibiting — transactions. (P. C.) 2 P. C. R. 575; 18 W. R. 157; 14 Moo. 496; 10 B. L. R. 159). *See also post* 12, 15, 16.

8. Principle of equity where one man allows another to hold himself out as the owner of an estate, and a third person purchases it for value from the apparent owner in the belief that he is the real owner. (P. C.) 2 P. C. R. 656 (18 W. R. 166; 11 B. L. R. 46; L. R. I. A. Sup. 40).

9. There is nothing in the position of a vendor being a Mahomedan woman living with her children upon the estate, and sometimes letting it, which should put any one upon enquiry whether she was the real owner or not. (P. C.) *Ib.*

10. Nor the mere fact of a man building upon or improving property belonging to the woman with whom he was living; nor the circumstance of the deed of sale from a Mahomedan woman containing the clause that she had made the sale with the consent of the family. (P. C.) *Ib.*

11. Act VIII of 1859 s. 260 was designed to check — purchases at execution-sales, and cannot affect the rights of members of a joint Hindoo family who are by law

BENAMEE (*continued*).

entitled to treat as part of their common property an acquisition, however made, by a member in his sole name, if made by the use of family funds. (P. C.) 2 P. C. R. 840 (19 W. R. 356; 12 B. L. R. 317).

12. In a suit for possession by the holder of a certificate of purchase of property sold at an execution-sale, it is open to the real owner if in possession (Act VIII of 1859 s. 260 notwithstanding) to show that plaintiff is the apparent owner (*benameedar*) and a mere trustee. (P. C.) 3 P. C. R. 122 (23 W. R. 358; L. R. 2 I. A. 154). *See also ante* 7, and *post* 15, 16.

13. Where a *Kubala* was entered into with plaintiff by a Hindoo widow as vendor, and was perfectly consistent with her being *benameedar* and with the allegations in the plaint that her sons caused her to enter into it on their behalf, they being the real owners, the real vendors, and the persons who actually received the purchase-money, which in a given event was to be returned: *Held* that plaintiff had disclosed a cause of action against the sons, as well as the mother, and was entitled to an adjudication of the question whether the contract was really entered into by the mother as the agent and on behalf of the sons and by their authority, or whether the plaintiff, knowing the facts, had elected to treat the mother as the sole contracting party. (P. C.) 3 P. C. R. 284 (26 W. R. 32; L. R. 3 I. A. 194).

14. Plaintiff was held not entitled to recover, his vendor having been found to have purchased — for the original judgment-debtor at a sale which did not take place until 1st June 1863 in execution of a decree of 31st May 1843, and to have allowed defendant, who claimed as purchaser under a subsequent sale in execution on 7th June 1855, to be put into possession, and to remain in possession for 9 years, without contesting his right to the property. (P. C.) 3 P. C. R. 659.

15. A sued for a declaration that P, the certified auction-purchaser of certain immoveable property, was merely a trustee for R, A's judgment-debtor: that the purchase in P's name was made with the intent of defeating or delaying him in the execution of his decree; and that he was at liberty to apply for execution against the property as the property of his judgment-debtor: *Held* that Act VIII of 1859 s. 260 was in no way a bar to the suit. I. L. R. 1 All. 235. *See also ante* 7, 12, and *post* 16.

16. The certified purchaser at a sale in execution of decree sued to establish his right to the property and for possession thereof: *Held* that the defendant in the suit was not precluded by s. 260 from resisting the suit on the ground that he was the actual purchaser of the property. I. L. R. 1 All. 290. *See also ante* 7, 12, 15.

See Estoppel 13.
Execution of Decree 4.
Sale (for Arrears of Revenue) 5.

Benares.

See Endowment 11.

Bench of Magistrates.

1. A — has no power to deal with cases coming under Act X of 1872 s. 530. A — may be empowered under s. 50 "to try such cases or such class of cases only and within such limits as the Government may direct." The definition of the term "trial" in s. 4 shows that it refers to trials for offences, and these do not come within the miscellaneous matters mentioned in s. 530. (Cr.) I. L. R. 3 Cal. 754.

Bhag.

See Bhagdaree.
Mortgage 46.
Partition 14.
Sale (in Execution of Decree) 13.

Bhagdaree.

See Construction 86.
Mortgage 46.
Partition 14.
Sale (in Execution of Decree) 13.

Bhag-Jote.

1. When lands are held under a — tenure, and the tenants are bound by agreement to cut and store the crops on their landlord's *chuck*, where it is afterwards to be divided, the dominion over the crops till division is in the landlord. I. L. R. 4 Cal. 890.

Bhaolee.

See Ejectment 2.
Enhancement 16.
Jurisdiction 28.

Bheel.

See Julkur 3.

Bhownuggur.

See Jurisdiction 6.

Bigamy.

See Marriage 7, 12, 13.

Bill of Exchange.

1. In the years 1870 and 1873 A drew certain bills of exchange upon B, which were accepted by B for the accommodation of A, and endorsed by A to the Bank of Bengal. In May 1876, A, by letter, agreed to execute a mortgage of a certain portion of his property, consisting of a share in a Privy Council decree, to B; and in the meantime to hold such property at the disposal of B, his successors, and assigns. In the month of June 1876, A became unable to meet his liabilities, and in the month of August following executed a conveyance of all his property to the Official Trustee upon trust for the benefit of A's creditors. The Bank assented to and executed this deed after it had been assented to and executed by some of the other creditors. The deed did not contain any composition with or release by the creditors, nor any covenant on their part not to sue A. In a suit by the Bank against B as acceptor of the bills: *Held* that B was not precluded, by Act IX of 1872 s. 132 and Act I of 1872 s. 92, from pleading that he was an accommodation acceptor only; but that the letter of May 1876 constituted a good equitable mortgage, and that B was not thereafter entitled, as against the Bank, to the equitable rights of an accommodation acceptor; and that the trust deed did not impair the "eventual remedy" of B, and that therefore he was not discharged from his suretyship under Act IX of 1872 s. 139. I. L. R. 3 Cal. 174.

2. The drawer and acceptor of a — can be joined as co-defendants in a suit brought by the holder of such —. (O. J.) I. L. R. 3 Cal. 541.

3. Three of the directors of the N. F. S. W. Co., one of whom was also the secretary, treasurer, and agent of the company, drew a — in favor of S in the following form: "Sixty days after the date of this first of exchange (second and third of the same tenor and date not being paid) pay to the order of S the sum of Rs. two lakhs only. Value received, and place to account of G P, K N, N K, Secretary, Treasurer, and Agent. The N. F. S. W. Co., Limited,

BILL OF EXCHANGE (*continued*).

Directors." The bill was endorsed by S to the Bank of Bombay, was duly presented for payment to the drawee, and was protested for non-payment. Subsequently to the drawing of the bill, the company went into liquidation. The Bank claimed as endorsees of the bill to prove against the company as drawers: *Held* (affirming the decision of the Court below) that the company was not liable. In order to make a company liable on a bill or note, it must appear on the face of such bill or note that it was intended to be drawn, accepted, or made on behalf of the company, and no evidence *dehors* the bill or note is admissible under Act X of 1866 s. 47. (O. J. Ap.) I. L. R. 4 Bom. 275.

4. It was agreed between the Bank of Bengal at Calcutta and C & Co. who carried on business there that the Branch of the Bank at Cawnpore should discount bills to a certain extent drawn by C who carried on business at Cawnpore, on C & Co. against goods to be consigned by rail to C & Co., and that the railway receipts for such consignments should be forwarded to C & Co. through the Cawnpore Branch of the Bank. C accordingly drew a bill on C & Co. payable 21 days after date, which the Cawnpore Branch of the Bank discounted, receiving the railway receipt for certain goods consigned to C & Co. C & Co. having accepted this bill, the Bank handed over the railway receipt to them. In a suit by the Bank against C on the bill, the latter set up as a defence that the bill had been discounted by the Bank on the oral understanding that the railway receipt was not to be transferred to C & Co. until they had paid the amount of the bill, and that the Bank had, by the breach of this condition, determined the defendant's liability. *Quære:* whether evidence of such oral understanding was admissible under Act I of 1872 s. 92. I. L. R. 2 All. 598.

See Hoondee.
Joint Stock Company 7.
Jurisdiction 28.
Partnership 1.

Bill of Lading.

1. Under the terms of a — "goods were to be delivered from the ship's tackle as fast as the steamer could discharge, failing which the agents were to be at liberty to land their goods at their godowns"; and the —, among other exceptions, "provided that the ship-owners should not be liable for loss by fire." The steamer, on arriving at the port of discharge, came alongside the wharf, and commenced unloading at the Custom-house godowns without giving the consignees the option of landing the goods from the ship's tackle. The consignees, however, did not object to the goods being landed at the godowns, and they paid, also without objection, a sum for the wharfage of a part of the goods in the godowns: *Held* that the ship-owners, if the goods when placed in the godowns were in their possession as carriers, were protected under the clause of the — providing against fire, as much as if the fire had occurred on board ship; and on the other hand, if the goods were in the possession of the ship-owners as wharfingers, they were not liable for the loss, inasmuch as the goods were destroyed by fire without any default on their part. (O. J.) I. L. R. 4 Cal. 737.

2. A —, given by the defendants to the plaintiff for certain goods, contained a stipulation that the goods were to be taken from the steamer's tackles by the consignees as fast as the steamer could discharge, failing which, the steamer's agents were to be at liberty to land the same into godowns, the costs of lighterage, godown rents, etc., thereby incurred to be borne by the respective consignees: *Held* that under this — the shipowners were entitled to charge for landing and wharfage, only in default of the consignees failing to take the goods from the steamer's tackles within reasonable time: *Held* (*per* Pontifex, *J.*) that for the speedy discharge of their vessel the ship-owners were entitled to land and wharf the goods, though not to charge for landing and wharfage, unless the plaintiff had had an opportunity of landing the goods himself. (O. J. Ap.) I. L. R. 5 Cal. 477.

See Trans-shipment 1.

Birt Tenure.

See Mafee-Birt Tenure.
Mortgage 31.
Oudh Sub-Settlement 3, 4, 6, 7.

Blind.

See Hindoo Law (Inheritance and Succession) 32.

Board of Trade.

See Marine 2, 3, 6.

Boat.

See Plaint 7.

Bona Fides.

1. Uberrima fides. *See* Privy Council 21.

See Ancestral Property 10.
Auction-Purchaser 2.
Bond 3.
Champerty 6.
Conditional Sale 1.
Contribution 2.
Criminal Trespass 4, 5.
Deccan Agriculturists Relief 9.
Defamation 2, 3.
Endowment 21, 22.
Estoppel 10.
Gift 4, 17.
Guardian and Minor 17, 22.
Hindoo Widow 14, 25, 38.
Husband and Wife 1, 2.
Jurisdiction 19, 30, 49.
Lease 7, 8.
Libel 5, 6.
Limitation 38.
,, (Act XIV of 1859) 1, 3, 7, 9, 17.
,, (Act IX of 1871) 26.
,, (Act XV of 1877) 21.
Manager 1, 2.
Mischief 2.
Mortgage 11, 14, 44, 80, 110, 126.
Onus Probandi 1.
Principal and Agent 9.
Privy Council 11.
Purdah Woman 5.
Securities (Government) 1.
Stolen Property 1, 4.
Trespasser 1.

Bond.

1. In the absence of satisfactory proof of fraud or mistake, every presumption ought to be made in favor of statements contained in a — which was deliberately entered into and which has been acted upon for many years. (P. C.) 3 P. C. R. 222 (25 W. R. 84; L. R. 3 I. A. 1; I. L. R. 1 Cal. 163).

2. Where the defendant executed to the plaintiff a — for the payment of the balance found to be due from the defendant to the plaintiff upon an adjustment of the account of their mutual dealings, which — contained the following stipulation, "I shall pay the money after causing the payment to be entered on the back of this — or after taking a receipt for the same; I shall not lay any claim to any payment made except in this way": *Held* that though the defendant at the time of the adjustment disputed the correctness of the account, yet that by having executed the

BOND (*continued*).

— and made payments under it, he must be held to have waived his objection, and in a suit on the —, could not be permitted to re-open the question of the correctness of the balance, though he might possibly have been allowed to do so had he alleged that he had discovered errors in the account after the execution of the —, and had he specified some of the alleged errors. *Held* also that the stipulation in the — could not be permitted to control Courts of Justice as to the evidence which, keeping within the rules of the general law of evidence in this country, they may admit of payments; and the Anglo-Indian law of evidence, not excluding oral evidence of payment, it would be against good conscience and the policy of the law to reject it, though the absence of indorsement is a circumstance of some importance, which ought not to be overlooked, but is by no means conclusive. I. L. R. 1 Bom. 45.

3. Where a person chooses to entrust to his own man of business a blank paper duly stamped as a —, and sealed by himself, in order that the instrument may be duly drawn up and money raised upon it for his benefit, if the instrument is afterwards duly drawn up and money obtained upon it from persons who have no reason to doubt the *bona fides* of the transaction, it must, in the absence of evidence to the contrary, be taken that the — was drawn in accordance with the obligor's wishes and instructions. I. L. R. 5 Cal. 39.

4. The proper mode of proceeding to put in suit a — to secure the costs of an appeal, is to move upon affidavits, showing a breach of the condition of the —, for a rule *nisi*, calling upon the obligor and sureties to show cause why the Court should not order that the — be assigned to some person named in the rule. (O. J.) I. L. R. 5 Cal. 437.

5. The obligors of a — for the payment of money describing themselves as "sons of R, zemindar and putteedar resident of mouza S," hypothecated as collateral security for such payment "their one-biswa five biswansi share": *Held*, in a suit on the — to enforce a charge on the one-biswa five-biswansi share of the obligors in mouza S, that, under Act I of 1872 s. 92 proviso 6, and s. 95, evidence might be given to show that the obligors hypothecated by the — their share in mouza S. I. L. R. 2 All. 832.

6. The obligee of a — for the payment of money, hypothecating immoveable property as collateral security for such payment, sued for the moneys due on the —, but omitted to claim the enforcement of his lien, and obtained a decree only for the payment of the amount of the — debt. He subsequently sued to enforce his lien: *Held* that under Act X of 1877 s. 43, as amended by Act XII of 1879 s. 7, he could not be permitted to sue to enforce his lien. I. L. R. 2 All. 838.

See Ancestral Property 1, 2, 3.
Attachment 12.
Co-Sharers 9.
Decree 10.
Evidence 8.
,, (Secondary) 1.
Hindoo Widow 50.
Indemnity Bond.
Instalments 4, 6.
Interest 1, 2, 10, 13, 17, 18, 19, 20, 21.
Judgment 8.
Limitation (Act XIV of 1859) 21.
,, (Act IX of 1871) 32, 61, 92, 95, 101.
,, (Act XV of 1877) 16, 17, 48.
Money Decree 1, 2, 3, 4, 5, 7.
Mortgage 17*a*, 38, 51, 64, 71, 110, 111, 117, 118, 120.
Plaint 1.
Practice (Appeal) 20.
,, (Suit) 1.
Principal and Surety 1, 12.
Registration 8, 21, 24, 28, 53.
Res Judicata 36.
See Sale (in Execution of Decree) 30.
Security 10.
Small Cause Court 5, 15, 18.
Stamp Duty 8, 15.

Bonus.

See Putnee 12.

Books.

See Account Books.
Obscene Books.
Partnership 10.

Borrower.

See Loan.

Boundary.

1. Where plaintiff sued to recover a quantity of land by rectification of certain survey awards which, he averred, demarcated erroneously the — between his zemindaree and the zemindarees of the defendants, it was held, on a consideration of the evidence, that his suit was rightly dismissed because he failed to prove the position or existence of a stream which he stated was the true — between the zemindarees. (P. C.) 2 P. C. R. 286 (13 W. R. P. C. 7; 13 Moo. 58).

2. Construction of a decree which directed that plaintiff should obtain possession of land according to the boundaries given in the plaint, and also specified the quantities incorrectly. (P. C.) 2 P. C. R. 442 (16 W. R. P. C. 5; 9 B. L. R. 150).

3. Great weight should be given to reports of Deputy Collectors upon local investigations in dealing with — questions. (P.C.) 2 P. C. R. 549 (17 W. R. 285; 14 Moo. 453).

4. In a suit for possession of land the boundaries of which were disputed, the Subordinate Judge ordered an Ameen to make a local investigation, and reported his order to the District Judge, who refused to allow the investigation to proceed: *Held* that this was a case coming within Circular Order No. 41 dated 2 October 1866, which authorizes local investigations by Ameens when it is necessary to ascertain by measurement disputed areas of land, and that the District Judge had no authority to stay the investigation. I. L. R. 4 Cal. 718.

5. The Privy Council expressed their approbation of the course taken by the High Court in a recent case of — dispute, not yet reported, of marking on a map the precise area in question, and observed that it was a practice which it was desirable for the Courts in India to follow in all — cases, so far as it was possible to do so, since disputes sometimes arise before their Lordships as to what the Indian Courts meant to decree. *See Rajah Lilanund Sing Bahadoor* v. *Maharajah Luchmuvar Sing Bahadoor*, 10 Nov. 1880.

See Boundary Marks.
Churs 11, 14, 18.
Decree 7.
Jurisdiction 18.
Plaint 4.
Privy Council 18, 25.

Boundary Marks.

1. The proviso contained in Act XXVIII of 1860 s. 25 gives a discretionary power to the Government of extending the time for appeal by suit at all times even after the expiry of the period limited. I. L. R. 1 Mad. 192.

Brahmin.

See Hindoo Law (Adoption) 41.
Illegitimate 4.
Will 57.

Breach of Contract.

See Arbitration 23.
Contract 2, 10, 11, 15.
Costs 7.
Estoppel 10.
Interest 11.
Jurisdiction 25.
Limitation (Act XV of 1877) 48.
Municipal 16.
Partnership 11, 15.
Restraint of Trade 1.

Breach of the Peace.

See Land Dispute 2, 6.
Nuisance 1.
Recognizance 2.
Security 4.

Breach of Trust.

1. It is a grave breach of duty in trustees, or administrators taking out letters of administration, to estates in this country under powers-of-attorney from executors or next-of-kin abroad, to mix the incomes raised by them from trust-properties, or the funds of the estate, in one common fund with their own moneys; and such a course of dealing may expose the trustees or administrators to criminal as well as civil liabilities. (O. J.) I. L. R. 6 Cal. 70.

See Criminal Breach of Trust.
Endowment 7, 34.
Religious or Charitable Trusts 2.

Bribery.

See Illegal Gratification.

British Subject (European).

1. Act X of 1872 s. 84 must be construed strictly with s. 72, and before a — can be considered to have waived the privilege conferred upon him by s. 72, it must appear that his rights under that section have been distinctly made known to him, and that he must have been enabled to exercise his choice and judgment whether he would or would not claim those rights. (Cr.) I. L. R. 6 Cal. 83.

2. The provisions of s. 72 relating to the kind of Court which shall have jurisdiction and shall not have jurisdiction to enquire into a complaint or try a charge against a —, constitute a privilege; *i.e.* they are not so much words taking away jurisdiction entirely, as words which confer on the — a right to be tried by a certain class of Magistrates and by no others, which right the Act enables him to give up. (Cr.) *Ib.*

3. The waiver of privilege spoken of in s. 84 must be an absolute giving up of all the rights, with reference to chap. VII, which a — has; and the words "dealt with as such before the Magistrate" mean everything contained in the chapter, *i.e.* the tribunal having cognizance of the case, the procedure, and also the punishment to which the accused would be liable. (Cr.) *Ib.*

See Conjugal Rights 5.
Jury 2.
Succession 2.

Brother.

1. Brothers of whole and half blood. *See* Hindoo Law (Inheritance and Succession) 23.

2. Half brother. *See* Hindoo Law (Inheritance and Succession) 41.

See Ancestral Property 5, 12.
Brother's Daughter's Son.
Brother's Son.
Brother's Widow.
Court Fees 8.
Father's Brother's Daughter's Son.
Father's Brother's Grandson.
Hindoo Law (Coparcenary) 20, 22.
" (Inheritance and Succession) 31, 34, 41, 43.
Hindoo Widow 10.
Mahomedan Law 6.
Mortgage 72.
Partition 12, 25, 28, 29.
Succession 6.

Brother's Daughter's Son.

See Certificate 5.
Father's Brother's Daughter's Son.

Brother's Son.

See Hindoo Law (Adoption) 16.
" (Inheritance and Succession) 31, 34.

Brother's Widow.

See Hindoo Law (Inheritance and Succession) 47.

Building.

1. The plea of acquiescence is applicable to suits for which a fixed term of limitation is prescribed by law; but mere delay in enforcing a right does not constitute acquiescence. The defendants took possession of, and erected a — on, land which they knew belonged to the plaintiff, and they had no claim to, without applying to the plaintiff for consent. The plaintiff abstained from suing to eject them for one or two years, knowing that the defendants were — on the land: *Held* that the delay in the institution of the suit was not sufficient to deprive the plaintiff of her right to relief. I. L. R. 1 All. 82.

2. Where, upon one joint owner of land having obtained a decree for the removal of a — erected on the land by another joint owner, the servants of the former went on the land and pulled down the —: *Quære* whether the servants were guilty of mischief, or whether they were merely exercising the remedy of abating a private nuisance, and exercising a legal right of self-defence. (Cr.) I. L. R. 3 Cal. 573.

3. The rule that a person — on the land of another is *primâ facie* entitled to remove the buildings erected upon the land demised or to receive compensation, when applied to a contract of tenancy, is not inconsistent with anything in Act IX of 1872, and therefore is unaffected by it. (O. J.) I. L. R. 5 Cal. 688.

See Land Dispute 4.
Landlord and Tenant 1.
Municipal 14.
Right to Light and Air 1, 3, 4, 5.
Sale (in Execution of Decree) 46, 47.
Under Tenure 2.

Building Lease.

1. On 6th April 1835 the Collector of Ahmedabad demised by lease a building-site in that city to the plaintiff's grand

Building Lease (*continued*).

father for a term of ninety-nine years. No rent was reserved by the lease as then presently payable, but it contained a provision that the lessee should pay, in respect of the said site, such land-tax as might "fall upon all." The lessee and his heirs held the site from the date of the lease down to 1878, without paying or being required to pay any land-tax or rent to Government. In 1878, however, Government levied from the plaintiff Rs. 2-11 as land revenue assessed on the site. Plaintiff thereupon sued the Collector of Ahmedabad for recovery of the amount, on the ground that the assessment and levy were illegal: *Held* that the plaintiff's building-site was exempted from liability to assessment by Act IV of 1868 (Bombay) s. 5 cl. 1 para. 2, which enactment applied to the case. I. L. R. 4 Bom. 505.

2. *Held* also that this exemption was not to continue beyond the term for which the site had been demised by Government, but that on its expiration it would be open to Government to resume the land altogether, or to relet it on such terms as to assessment, or otherwise, as might be the pleasure of Government. *Ib.*

3. The origin of Act IV of 1868 (Bombay) mentioned, and the provisions contained in it, relating to exemption from the payment of assessment, referred to and discussed. *Ib.*

Bund.

See Embankment.

Bundhoo.

See Endowment 28.
Hindoo Law (Inheritance and Succession) 5, 19.

Burmah.

See Insolvency 8.
Jurisdiction 42.
Recorder.

Business (Carrying on).

See Bill of Exchange 4.
Caste 1.
Guardian and Minor 20.
Hindoo Law (Coparcenary) 16, 27, 28, 29, 30.
Husband and Wife 12.
Insolvency 15.
Manager 5.
Municipal 11.
Restraint of Trade 1.
Service 3, 4, 5, 6.

Bye-bil-Wuffa.

See Mortgage 17*b*.

Calendar.

See Limitation (Act XV of 1877) 17.

Cancellation.

See Ancestral Property 3.
Bailment 4.
Contract 6.
Co-Sharers 6.
Court Fees 8.
Declaratory Decree 5, 9, 11, 18.
See Deed of Sale 1, 2, 6.
Documents 4.
Ejectment 8.
Hindoo Law (Adoption) 42.
Lease 1*a*, 9.
Libel 4.
Limitation (Act IX of 1871) 91, 96.
Marine 3.
Meerasee 6.
Practice (Appeal) 20.
Relief 1, 3, 4.
Res Judicata 29, 31.
Reversioner 2.
Sale (in Execution of Decree) 17, 39.
Sunnud 1, 2, 3, 4.
Under-Tenure 2.
Will 11.

Canoongoe.

See Churs 1.

Capital Punishment.

See Murder 4.
Whipping 1.

Carrier.

See Bill of Lading 1.
Railway 2, 3, 6, 8.
Shipping 1, 2.

Caste.

1. In a suit upon an agreement binding defendants to remain subject to the orders of plaintiff, the head of their —, not to carry on their trade with the assistance of any other persons than their own —, and imposing penalties for non-performance: *Held* that it would be contrary to public policy to give effect to such an agreement. I. L. R. 2 Mad. 44.

See Ahir.
Forfeiture 1.
Guardian and Minor 18.
Hereditary Office 6.
Hindoo Law (Adoption) 35, 41.
" Widow 23.
Hulwaee Caste.
Lingayet Caste.
Maraver Caste.
Marriage 7.
Prostitution 3.
Talabda Koli Caste.
Vania Caste.

Cattle-Grazing.

1. Plaintiff erected a hut on public ground in a certain village, and lived there annually for a few months, while his cattle grazed on the village grazing-ground. He was not the owner or lessee of any land in the village. On being prevented by the Collector from thus grazing his cattle, plaintiff brought a suit against that officer for a declaration of his right to graze his cattle within the limits, not only of that village, but of any other village in the district: *Held* that he was not entitled to any such right; that the phrase "village cattle" in Act I of 1865 (Bombay)

CATTLE-GRAZING (*continued*).

s. 32 does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village; and that that Act does not vest the right of sanctioning such a diversion of the village grazing ground in the villagers themselves, but in the Revenue Commissioner, whose consent must be obtained. I. L. R. 2 Bom. 110.

See Enam 5.

Cause of Action.

1. The words — in Act VIII of 1859 s. 2 are to be construed with reference rather to the substance than to the form of action. (P. C.) 2 P. C. R. 899 (20 W. R. 377; 12 B. L. R. 304; L. R. I. A. Sup. 212).

They cannot be taken in their literal and most restricted sense. (P. C.) 3 P. C. R. 213 (25 W. R. 1; L. R. 3 I. A. 283; I. L. R. 1 Cal. 144). *See also* 3 P. C. R. 540 (L. R. 5 I. A. 149; I. L. R. 4 Cal. 190), (F. B.)*I. L. R. 6 Cal. 319.

2. Continual —. *See* Right to Water 2.

See Account 1.
Arbitration 8.
Benamee 13.
Distraint 1.
Hindoo Law (Religious Ceremonies) 1, 2, 3.
" Widow 8.
Hoondee 9.
Instalments 6.
Joinder of Causes of Action.
Jurisdiction 17, 25.
Limitation 9, 37, 40, 44, 45.
" (Act XIV of 1859) 27.
" (Act IX of 1871) 6, 7, 30.
" (Act XV of 1877) 34.
Mortgage 124.
Municipal 13.
Onus Probandi 2.
Partnership 13.
Practice (Suit) 1.
Pre-emption 18.
Relinquishment 1.
Res Judicata 4, 7, 25, 26, 28.
Right of Suit.
Small Cause Court 28.
Special Appeal 12.
Splitting Cause of Action.

Causing Death by Rash or Negligent Act.

1. In the case of a trivial dispute the accused gave the deceased a severe push on the back which caused him to fall to the road below a distance of 2½ cubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after: *Held* that on these facts the accused was not guilty of the offence of — described in s. 304*a* Penal Code (Act XXVII of 1870 s. 12), nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and, *a fortiori*, no designed causing of it. (Cr.) I. L. R. 1 Mad. 222.

2. The above section does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result. If such knowledge can be imputed, the result is not to be attributed to rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate. Acts, probably or possibly, involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 338, or 304*a* Penal Code if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender and placed in their appropriate place in the class of offences of the same character. (Cr.) I. L. R. 4 Cal. 764.

3. Where an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased: *Held* that it was not sufficient, in order to find the accused guilty of a rash act only under s. 304*a* Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district and of the risk to life involved in striking a person afflicted with that disease. (Cr.) I. L. R. 4 Cal. 815.

See Culpable Homicide (not amounting to Murder) 1.
Grievous Hurt 2.

Cazee.

1. The enactment of Reg. XXVI of 1827 (Bombay) was adverse to any supposition that the office of — could be hereditary. The repeal of that Regulation by Act XI of 1864 left the Mahomedan law as it stood before the passing of that Regulation, and that law sanctioned no grant of such an office to a man and his heirs. I. L. R. 1 Bom. 633; *Ib.* 3 Bom. 72.

2. The appointment of — lies exclusively with the Sovereign or other chief Executive officer of the State, and ought to be made with the greatest circumspection with regard to the fitness of the individual appointed; and though the Sovereign may have full power to make the *watan* attached to the office of — hereditary, yet he has, under the Mahomedan law, no power to make the office itself so. *Ib.*

3. In the absence of an established local custom to that effect, the office of — is not hereditary. *Quære* whether such a custom would be valid. *Ib.*

See Manager 4.

Central Provinces.

See Mortgage 17*b*.

Certificate.

1. Except as to the propriety or otherwise of an order made granting a —, no appeal is allowed by Act XXVII of 1860. Consequently no appeal lies under the Act on a question of taking security from a — holder. I. L. R. 1 Cal. 127 (24 W. R. 362). *See also* I. L. R. 1 All. 287.

2. The Court will refuse to grant a — under Act XXVII of 1860, to collect the debts of an intestate who has been dead 40 years at the time of making the application, the presumption being that, owing to the operation of the law of limitation, there could be now no debts due to him which could be recovered. I. L. R. 3 Cal. 616.

3. A question of title cannot be judicially determined between parties, in an application for a — under Act XXVII of 1860. Therefore, where the object of such an application was to obtain a judicial determination as to the validity of an alleged adoption: *Held* that such a question could only be decided in a Civil Court. *Ib.* *See also* 10 *post*.

4. Proximity of residence and of kinship are not such considerations as should warrant a Judge in granting a — under Act XXVII of 1860 to any person in preference to another who has *primâ facie* the better title to the beneficial ownership of the debts. I. L. R. 4 Cal. 411.

CERTIFICATE (*continued*).

5. A father's brother's grandson has a right to obtain a — under Act XXVII of 1860 in preference to a brother's daughter's son. *Ib.*

6. The person entitled to a — under Act XXVII of 1860 to collect the outstanding debts due to the private estate of a deceased *mohunt* is the spiritual son (the *chela*) and not the spiritual brother (*gooroobhaee*) of the deceased. I. L. R. 4 Cal. 954.

7. A son adopted in pursuance of an *unoomoti puttro* (power to adopt), some time after the death of his adoptive father, does not require, and is not entitled to obtain, a — under Act XXVII of 1860, to enable him to collect debts in respect of the properties left by his adoptive father, which accrued due while they were under the management of his adoptive mother. The estate of the adoptive father, if the adoption is a good one, vests immediately on the adoption in the adopted son, and debts to it, if they accrued due after the death of the adoptive father, are debts recoverable by the adopted son in his own right and not as representative of his adoptive father. I. L. R. 5 Cal. 251.

8. Where a person to whom a — had been granted under Act XXVII of 1860 to collect the debts due to the estate of a deceased Hindoo, but who had no share or interest in such estate, and charged such estate with the payment of such debt: *Held* that the creditor could not, by virtue of the acts of such person, claim to recover the moneys advanced by him to such person from the heirs and estate of the deceased, even though such moneys had been applied to the liquidation of the debts of the deceased. I. L. R. 2 All. 513.

9. No appeal lies from an order of a District Judge, refusing an application to recall a — granted by him under Act XXVII of 1860. I. L. R. 6 Cal. 40.

10. A, alleging himself to be an adopted son opposed the application for the grant of a — under Act XXVII of 1860 to B, who, irrespective of the alleged adoption, would be the legal lineal heir of the deceased. The Court before whom the application was made refused the grant of the —, on the ground that sufficient *primâ facie* evidence existed establishing the validity of the adoption: *Held* on appeal that the Appellate Court, concurring with the opinion expressed by the Court of first instance in respect of the *factum* of the adoption, would not be justified in setting aside the decision, on the ground that such Court was wrong in entering into and deciding the question as to the validity of the adoption. I. L. R. 6 Cal. 303. *See also* 3 *ante*.

11. On an application for the grant of a — under Act XXVII of 1860, which is opposed by a party, who alleges he has a preferable title to it, the Court should adjudicate the question of title, with a view to determine which party has the preferential right to the —. *Ib.*

See Benamee 12, 15, 16.
Evidence (Admissions and Statements) 4.
Execution of Decree 17, 20.
Guardian and Minor 25, 27, 30.
Hereditary Office 8, 9.
Insolvency 23.
Khas Mehal 1.
Limitation (Act XV of 1877) 10.
Marine 2, 3, 6.
Mortgage 94, 132.
Pension 1.
Practice (Commissions) 3, 6, 7.
" (Review) 7.
Privy Council 35, 39.
Registration 46, 47, 56.
Res Judicata 26.
Sale (in Execution of Decree) 7, 12, 24, 25, 32, 36, 44.
Toda Giras Huk 1.
Will 55.

Cesses.

Plaintiffs sued to recover back from defendant the amount levied by him as local cess on certain *wanta* lands belonging to plaintiffs, defendant claiming to be the superior holder of the village in which the lands were situated. The amount was levied by defendant through the assistance of the mamlutdar under Act III of 1869 (Bombay) s. 8. Defendant contended that, in consequence of a demand from Government, he had paid local cess on the whole of his talooka, including the village in which plaintiff's lands were situated, and was therefore entitled, under Act IX of 1872, ss. 69 and 70, to recover from them the amount which he had paid to Government as a portion of the cess which rateably fell upon their lands. It was found that the relation of landlord and tenant did not exist between them, and that defendant paid local cess for plaintiff's lands fraudulently and with the intention of thereby making evidence of title to their lands, knowing that he had no lawful or just claim to them: *Held* that defendant was not the superior holder of the lands, within s. 8 of the former Act, and was therefore, not entitled to the assistance of the revenue officers of Government to recover the cess provided by that section for superior holders as against tenants and occupants, although he might have paid the local cess due on the land in plaintiff's possession, and that, consequently, the aid of the mamlutdar was illegally and improperly given to defendant for the recovery of the amount from plaintiffs; that defendant was not a person "interested in the payment" of the money made by him to Government within the meaning of Act IX of 1872 s. 69, assuming that a portion of that sum was demanded by Government in respect of plaintiff's *wanta* lands, and that they were "bound by law to pay" it to Government; and that defendant did not "lawfully" make the payment, within the meaning of s. 70 of the Act, inasmuch as he did so fraudulently and dishonestly. I. L. R. 4 Bom. 643.

See Custom 17.
Enhancement 26.
Jurisdiction 32.
Small Cause Court 7.
Timber 3.

Cession.

See Jurisdiction 6.

Chakeran Land.

See Service Tenure 1, 3, 6, 7.

Chalvadi.

See Hereditary Office 4.

Champerty.

1. A suit cannot be maintained upon an agreement which does not operate as a transfer of the property, but only as an agreement to transfer so much of it as might be recovered in a suit to be thereafter instituted. (P. C.) 2 P. C. R. 616 (18 W. R. 140; 11 B. L. R. 36).

2. Although the law of — was not applicable to the Mofussil, the Courts would be exercising a very unsound discretion, and acting on a very erroneous principle, if they were to allow a stranger to interfere in family matters, by an agreement between him and the real heirs that, if he should establish their claim, he should be entitled to a share of their estate. Such an agreement cannot be enforced, being something against good policy and justice, tending to promote unnecessary litigation, and in the legal sense immoral. (P. C.) 2 P. C. R. 977 (22 W. R. 148; 13 B. L. R. 509; L. R. 1 I. A. 241). *See also post* 3, 6. *See* I. L. R. 3 Bom. 402.

3. Although the English laws of maintenance and — are not of force as specific laws in India (whether in the

CHAMPERTY (*continued*).

Presidency towns or the Mofussil), yet contracts of this character ought under certain circumstances to be held to be invalid as being against public policy. (P. C.) 3 P. C. R. 361 (L. R. 4 I. A. 23; I. L. R. 2 Cal. 233). *See* I. L. R. 3 Bom. 402.

4. A fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being *per se* opposed to public policy; and consequently, in the absence of malice and want of probable cause, an action cannot be maintained for costs against a third person on the ground that he was a mover of, and had an interest in, the suit. (P. C.) *Ib.*

5. In 1869, P, the liquidator of the N. F. Co., compromised for Rs. 15,000 the claims of the Company against the fourth defendant M K, which amounted to Rs. 161,500. P was induced to agree to this compromise in consequence of representations made to him by the friends of M K to the effect that M K had no available assets and could not meet his liabilities. In 1878 the first plaintiff, G J, alleging that the said compromise had been fraudulently effected, and that the defendant M K at the time of the compromise had been and was still possessed of ample property to pay off his liabilities, induced the liquidator of the Company to assign to him the Company's claim against M K, and brought this suit, praying that the compromise with P might be declared not binding, and that M K might be ordered to pay the plaintiff, as assignee of the N F. Co. the sum of Rs. 161,500 with interest: *Held* that the assignment to the plaintiff G J of the claims of the N. F. Co. against M K was effected with a view to litigation; and that, under the circumstances, the suit was not maintainable. (O. J.) I. L. R. 3 Bom. 402.

6. A *bonâ fide* purchase of a share in a claim about to be enforced by a suit is not void under Act IX of 1872 s. 23; and a suit may, after such purchase, be properly brought by the vendee and vendors as co-plaintiffs. I. L. R. 5 Cal. 4.

See Vendor and Purchaser 1.

Charge.

See Joinder of Charges.
Public Servant 4.
Withdrawal of Charge.

Charity.

See Endowment.
Limitation (Act IX of 1871) 26.
,, (Act XV of 1877) 51.
Religious or Charitable Trusts.
Will 14, 51, 52, 62, 63.

Charter.

Calcutta High Court's. s. 11. *See* Title Deeds 1.
,, ,, s. 12. *See* Bailment 1.
Jurisdiction 13, 37, 54, 55, 56.
,, ,, s. 15. *See* High Court 29, 32.
Privy Council 35.
,, ,, s. 16. *See* High Court 30.
,, ,, s. 26. *See* ,, 3.
,, ,, s. 36. *See* ,, 35.
See Jurisdiction 9.
Calcutta Supreme Court's. *See* Endowment 82.
Bombay High Court's. s. 12. *See* Jurisdiction 17.
,, ,, s. 25. *See* High Court 26.
Madras High Court's. *See* High Court 19.
Jurisdiction 20.
,, Supreme Court's. *See* Jurisdiction 20.
N. W. P. High Court's. s. 10. *See* High Court 21, 24.
Limitation 48.
,, ,, s. 27. *See* Jurisdiction 2.
Limitation (Act IX of 1871) 39.
,, ,, s. 31. *See* Privy Council 42.

Charter Party.

See Principal and Agent 7.
Shipping 1, 2.

Cheque.

1. The indorsees of a — sued the indorser, stating in their plaint that the — had been lost, and that the defendant refused to give them a duplicate of it, and claiming a duplicate of it or the refund of the money they had paid the defendant on the —: *Held* that the plaint disclosed a cause of action against the defendant. Also that the plaint should be amended by joining the drawer of the — as a defendant in the suit. I. L. R. 2 All. 754.

See Principal and Surety 9.

Chhedra.

Succession to the — Raj. *See* Raj 5.

Child.

1. Where a mother abandoned her —, with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the — died in consequence of the abandonment: *Held* that she could not be convicted and punished under s. 304 and also under s. 317 Penal Code, but under s. 304 only. (Cr.) I. L. R. 2 All. 349.

See Husband and Wife 15.
Illegitimate 9.
Maintenance 10.
Succession 6.

Chillaree.

Proprietorship of Talooka —. (P. C.) 3 P. C. R. 12.

Chingleput.

District Court of —. *See* Jurisdiction 21.

Churs (Alluvion and Diluvion and Islands).

1. The title by accretion to a new formation considered. (P. C.) 2 P. C. R. 171 (11 W. R. P. C. 2; 12 Moo. 136; 2 B. L. R. P. C. 4).

2. In a suit to recover possession of alluvial land in the enjoyment of innocent purchasers for value without notice, plaintiff must give strict legal proof of an adverse title to the land as alluvial, and he must show the nature of the original formation of the *chur*, where it first appeared, and to what it first adhered. (P. C.) *Ib.* *See* (P. C.) 2 P. C. R. 587 (18 W. R. 4; 14 Moo. 595).

3. Where plaintiff went to trial below, alleging that the land claimed was attached to his estate as alluvial, he was not allowed to raise in appeal a different case—one simply of original ownership of the site of the lands reformed. (P. C.) *Ib.*

4. So where, in a suit for recovery of possession of alluvial lands, the only point raised by defendant in the Courts below was one as to the identity of the lands, whether, that is, they were included in certain resumption

CHURS (*continued*).

proceedings as appertaining to plaintiff's estate, it was held that defendant could not in appeal before the Privy Council raise the question as to whether the lands had been improperly resumed by Government with those whom plaintiff now represents. (P. C.) 2 P. C. R. 199 (11 W. R. P. C. 27 ; 2 B. L. R. P. C. 64 ; 12 Moo. 470).

5. The custom to be established under Reg. XI of 1825 s. 2, as to the disjunction and junction of alluvial land by the encroachment or recess of a river, must be a local custom. Canoongoe papers are not sufficient to prove the existence of such custom. (P. C.) 2 P. C. R. 217 (11 W. R. P. C. 42 ; 13 Moo. 1 ; 3 B. L. R. P. C. 5).

6. Plaintiff sued for the recovery of alluvion lands which originally formed a portion of his estate which had been washed away by the Ganges, but which subsequently re-formed. The defendants relied on Reg. XI of 1825 s. 4, and contended that the plaintiff's land having been wholly submerged so as to make the defendant's land the river boundary, the subsequent recession of the river caused a gradual accession to their land, and an increment by annexation to their estate, notwithstanding that the land had been re-formed on the ascertainable and ascertained site of the plaintiff's mouzah : *Held* that s. 4 did not apply to this case, and that that section refers only to cases of gain by acquisition by means of gradual accession to the gain which an individual proprietor might make from what was part of the public territory, and not from a private person's authority. (P.C.) 2 P. C. R. 336 (14 W. R. P. C. 11 ; 13 Moo. 467 ; 5 B. L. R. 521). *See also* 14 W. R. 424, 15 W. R. 461, (P. C.) 2 P. C. R. 442 (16 W.R. P.C. 5 ; 9 B.L. R. 150), 16 W. R. 95, 109 ; (P. C.) 2 P. C. R. 640 (18 W. R. 113 ; 10 B. L. R. 406), 22 W. R. 238, 324; 23 W. R. 113; 24 W. R. 91, and *post* 15. *See* 19 W. R. 89, 20 W. R. 117, 21 W. R. 115, (P. C.) 3 P. C. R. 485 (I. L. R. 3 Cal. 796), 3 P. C. R. 631.

7. The presumption against those who slumber on their rights is the stronger when the subject-matter, as in the case of alluvial land, is in a constant state of change, and the difficulty of proof increased by lapse of time. (P. C.) 2 P. C. R. 587 (18 W. R. 4 ; 14 Moo. 595).

8. Review of the law of alluvion in Bengal as declared by Reg. XI of 1825 and decided cases. (P. C.) 2 P. C. R. 640 (18 W. R. 113 ; 10 B. L. R. 406).

9. Nature of the custom which plaintiff was required to establish in order to disturb defendant's long uninterrupted possession of land, once alluvial, lying between two branches of a river, or between two rivers, the volume of water in which continually shifted so that alternately one of those channels was deep and the other fordable. (P. C.) 2 P. C. R. 650 (18 W. R. 160 ; 11 B. L. R. 265 ; L. R. I. A. Sup. 34).

10. A contract between two former zemindars that the ownership and right of possession in the land should shift with the volume of water attaching to the riparian proprietor on the fordable side of the channel, is not binding on one who was a stranger to the arrangement. (P. C.) *Ib.*

11. In a suit to recover alluvial land of which he had been put in possession according to certain boundaries, plaintiff was held to have failed in sustaining the burden of proof that the land he now claimed was identical with that of which he was put into possession by the Magistrate's order. (P. C.) 2 P. C. R. 758 (19 W. R. 114).

12. Where a party seeks to turn out another in possession of chur land, which plaintiff claims as part of his mehal purchased by him from Government, the suit is in the nature of an ejectment suit, and plaintiff must recover upon the strength of his own title, and not upon the weakness of his adversary's. (P. C.) 2 P. C. R. 879 (20 W. R. 211).

13. Though an island or land thrown up and surrounded by a river may become vested in Government under Reg. XI of 1825 s. 4 cl. 4, it does not follow that, if the river which separates the island from the mainland dries up after the island has been resumed by Government, the bed of the river becomes the property of Government in cases in which the bed of the river is not gained as an accretion to the island by gradual accession within the meaning of cl. 1. (P. C.) 2 P. C. R. 891 (20 W. R. 276.)

14. In a dispute between the zemindars of Sohagpore and Doomree relative to certain lands : *Held* that the proper issues to be tried were (1) whether the land had been settled in 1837 with the maliks of Sohagpore as proprietors of alluvion which had gradually accreted to their estate, or upon what other grounds such settlement was made ; the *onus* of proving gradual accretion being on the plaintiffs ; and (2) whether there was at the permanent settlement, and has been since, a clear and definite usage that the channel of the Gunduck should be the boundary of the zemindarees ; the burden of proving the affirmative of this being on the defendant. (P. C.) 2 P. C. R. 910 (20 W. R. 427). *See* 18 *post.*

15. Where land which has been submerged re-forms, and can be identified as having formed part of a particular estate, the owner of that estate is entitled to it. (P. C.) 3 P. C. R. 56 (23 W. R. 8 ; 14 B. L. R. 268 ; L. R. 2 I. A. 28), 3 P. C. R. 260 (25 W. R. 242.)

16. But the above ruling cannot be taken to apply to land in which, by long adverse possession or otherwise, another party has acquired an indefeasible title. (P. C.) 3 P. C. R. 485 (I. L. R. 3 Cal. 796). *See also* 3 P. C. R. 631.

17. Although, in the case of a wandering and navigable stream, the bed of the river may be said temporarily to belong to a public domain, that state of things exists only while the water continues to run over the ground. (P. C.) *Ib.*

17*a*. Where a plaintiff relies on an alleged adverse possession of lands for more than twelve years after their re-formation, the question to be decided is whether he has had such possession for 12 years. (P. C.) *Ib.*

18. In the absence of proof of a clear and distinct usage, the Privy Council were of opinion that there was no sufficient evidence to justify the finding of the High Court that the settlements made with the plaintiffs, though temporary, were made on the basis that the river Gunduck was the boundary line not only of the two zillahs Sarun and Tirhoot, but of the estates appertaining to those districts ; but that the land in dispute was settled with plaintiff's ancestors as the proprietors of alluvion, and had become an increment to their estate by gradual accretion under Reg. XI of 1825 s. 4 cl. 1. (P. C.) 3 P. C. R. 670 (L. R. 6 I. A. 211). *See* 14 *ante.*

19. There is no obligation on the part of Government to assess permanently land which becomes an increment to an estate by gradual accession under the above clause. Nor does a temporary assessment reduce to a temporary estate, or to an estate of a limited and temporary character, the interest of the holder in the accretion, which was permanent, as being an increment to an estate which was permanent ; but it merely fixes the period during which the increment should be subject to the revenue assessed, so that the Government at the expiration of the settlement might be able to raise it according to the value of the land. (P. C.) *Ib.*

20. Where, when a chur was settled by the Government with the defendants, as an accretion to lands belonging to them, and on the expiration of that settlement the Government re-settled it with them, and included the lands now in dispute (which were found to have formed in the bed of the river) as part of the said chur in the new settlement: *Held* that, even if the Government could not, in consequence of Act IX of 1847, include these lands with the chur without a new survey, they were entitled to take possession of them as lands which originally formed as an island and were at their first formation surrounded by water which was not fordable, and to oust the plaintiffs who were trespassers, and to put the defendants into possession. (P. C.) 3 P. C. R. 730 (L. R. 7 I. A. 73).

21. When a suit is brought for possession of *chur* or other land under cultivation at the time of the institution of the suit, but previously jungle or unculturable, the *onus probandi* still lies on the plaintiff ; but on his proving that the chur was formed, or the land first became culturable, within twelve years before he instituted his suit, the *onus* is shifted to the defendant, who must establish his adverse possession for more than twelve years. I. L. R. 5 Cal. 36.

22. When the area of land held by a tenant under a permanent tenure has been increased by accretion, the tenant becomes subject to pay an increased rent on account of the land gained by accretion on the conditions laid down in Reg. XI of 1825 s. 4 cl. 1. But before increased rent can be recovered, a notice must be served upon the tenant under Act VIII of 1869 (Bengal) s. 14, informing him of the amount of rent to be imposed and the grounds upon which it is claimed. I. L. R. 5 Cal. 823.

Churs (*continued*).

See Jurisdiction 8.
Mortgage 116.

Coal.

See Sale 5, 9.

Co-Defendants.

See Bill of Exchange 2.
Compromise 2.
Hindoo Law (Adoption) 18.

Coercion.

See Contract 3.
Duress.
Undue Influence.

Collector.

See Guardian and Minor 14.
Hereditary Office 1, 3, 8, 9.
Lease 9.
Sale (in Execution of Decree) 18.
Stamp Duty 7, 24.

Collusive Decree.

See Reversioner 2.
Hindoo Law (Adoption) 47.

Commission.

See Administrator-General 1.
Manager 3.
Partnership 4, 5.
Practice (Commissions).

Commission Agent.

See Insolvency 22.

Commitment.

1. The appellant after his discharge by the Assistant Magistrate upon a charge under s. 457 Penal Code, was committed to the Sessions Court by order of the Sessions Judge under Act X of 1872 s. 296 upon charges under ss. 380 and 457 Penal Code: *Held* that the — was illegal, and that "Session case" within the meaning of Act X of 1872 s. 296 is a case exclusively triable by a Court of Session. (F. B. Cr.) I. L. R. 1 All 413. *See* I. L. R. 2 All. 570.

2. But the — under Act X of 1872 s. 296 by the District Magistrate of an accused charged with an offence under s. 380 Penal Code, after his discharge by the Deputy Magistrate, was maintained on the ground that the Deputy Magistrate discharged the accused without examining the principal witness in the case, and because further evidence was available. I. L. R. 4 Cal. 16.

3. A Court of Sessions has no power to commit to itself for trial a case not triable exclusively by such Sessions Court. The words "commit the case itself" in Act X of 1872 s. 471 cannot (when read in connection with s. 231) be held to empower a Sessions Court to commit such a case to itself. (Cr.) I. L. R. 4 Cal. 570.

4. L was charged by S with offences under ss. 193 and 218 Penal Code, and also accused of acts amounting to offences punishable under s. 466 with seven years' imprisonment. The Magistrate directed his discharge, whereupon L applied to the Court of Session, and S was committed for trial charged under s. 218 and acquitted by the Court of Session. The Court of Session then, under Act X of 1872 s. 472, charged L with offences punishable under ss. 193, 195, 211, and 211 and 109 of the Penal Code, and committed him for trial: *Held* that such — was not bad because it included the charge under s. 193, such an offence not being exclusively triable by a Court of Session. (Cr.) I. L. R. 2 All. 398.

5. The High Court is competent, under Act X of 1872 s. 297, to quash a — made by a Court of Session under s. 472. (Cr.) *Ib.*

6. Notwithstanding that L had only charged S with offences under ss. 193 and 218 Penal Code: *Held* that the Court of Session was competent to charge L with offences under ss. 195 and 211, if such offences had come under its cognizance. (Cr.) *Ib.*

7. The power of a Civil Court to commit a case to the Court of Session, after completing the preliminary enquiry, is given by Act X of 1872 s. 474, and is restricted to the class of cases provided in that section, *viz.*, where offences exclusively triable by a Court of Session are committed before the Civil Court. (Cr.) I. L. R. 4 Bom. 287.

8. Section 471 deals with a more extended class of cases, *viz.*, all those mentioned in ss. 467, 468, and 469, in which not merely a Civil Court but any Court, civil or criminal, and whether possessing or not possessing the power to commit to the Court of Session, is of opinion that there is sufficient ground for holding an enquiry; and it enacts the procedure to be followed by the Court, which may elect to adopt one of two courses, that is to say, it may either commit a case to the Court of Session, if and where it has the power to do so, or, if it has not that power or is not disposed to exercise it, it may send the case to a Magistrate having power to try or commit for trial the accused person for the offence charged. (Cr.) *Ib.*

9. Certain persons were charged under s. 417 Penal Code, and were discharged by the Magistrate enquiring into the offence under Act X of 1872 s. 215. The Court of Session, considering that the accused persons had been improperly discharged, forwarded the record to the Magistrate of that district, suggesting to him to make the case over to a Subordinate Magistrate, with directions to enquire into any offence, other than the offence in respect of which the accused persons had been discharged, which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over made an enquiry, and committed the accused persons for trial before the Court of Session on charges under ss. 363 and 420 Penal Code. It was contended that the Court of Session was not competent to "direct the accused persons to be committed" under Act X of 1872 s. 296, the case not being a "Sessions case" within the meaning of that section, and that the — was consequently illegal: *Held* that there was no "direction to commit" within the meaning of that section, *i.e.* to send the accused persons at once to the Sessions Court, without further enquiry, and whether or not the enquiry was made in consequence of the suggestions of the Court of Session was immaterial, and that the enquiry upon the charges under ss. 363 and 420 Penal Code was rightly held by the Subordinate Magistrate and the — could not be impeached. (Cr.) I. L. R. 2 All. 570.

10. Where a Magistrate had tried a case exclusively triable by a Court of Session, and the conviction of the accused person and the sentence passed upon him at such trial were for that reason annulled by the Court of Session, but the proceedings held at such trial were not annulled: *Held* that such Magistrate might commit the accused person to the Court of Session on the evidence given before him at such trial. (Cr.) I. L. R. 2 All. 910.

See Criminal Proceedings 4, 5, 9.

Company.

See Joint Stock Company.

Compensation.

1. A Karkoon on the establishment of a Civil Court entrusted with the execution of a writ, reported to the Court that a particular person obstructed him in attaching property as commanded by the writ; and a report was thereupon made by the Court to a Magistrate, with a view

COMPENSATION (*continued*).

to proceedings being taken against the obstructor. The Magistrate acquitted the accused and ordered the Karkoon to pay the accused — under Act X of 1872 s. 209: *Held* that such last-mentioned order was wrong, the Karkoon not being a complainant within the meaning of the section. In such a case as the above, the Subordinate Judge should be regarded as the complainant; and he, having acted judicially, was not liable to the penalty provided in s. 209. (Cr.) I. L. R. 1 Bom. 175.

See Arrest 2.
Attachment 11.
Contract 15.
Court Fees 8.
Excise 1.
Jurisdiction 31.
Land taken for Public Purposes 1, 2.
Limitation (Act IX of 1871) 78, 97.
,, (Act XV of 1877) 48.
Mortgage 95.
Municipal 6, 14, 17.
Principal and Surety 12.
Relinquishment 5.
Rent 4.
Right to Light and Air 4.

Compounding.

1. Whenever the words "voluntarily," "intentionally," "fraudulently," "dishonestly," or others, whose definition involves a particular intention, enter along with a specified act into the description of an offence, the offence not being one irrespective of the intention, is not one which the exception to s. 214 Penal Code by itself allows to be compounded. The offence, to admit of compromise, must be one in this sense irrespective of the intention, and it must be one for which a civil action may be brought at the option of the person injured instead of criminal proceedings. (F. B. Cr.) I. L. R. 1 Bom. 147.

2. The offence of voluntarily causing grievous hurt cannot accordingly be compounded. (F. B. Cr.) *Ib.*

3. Enticing away a married woman with a criminal intent and criminal breach of trust are not offences which may lawfully be compounded. (Cr.) I. L. R. 1 Mad. 191.

See Adultery 1.
Arbitration 19.
Dismissal of Complaint 1.

Compromise.

1. A — of a suit should be carried out by proper deeds and be filed in Court, particularly where minors are concerned. (P. C.) 2 P. C. R. 462 (16 W. R. P. C. 22).

2. How the Privy Council decided where one defendant jointly with another appealed to the High Court, but having compromised the case against him, did not join in the appeal to the Privy Council. (P. C.) 2 P. C. R. 766 (11 B. L. R. 375; L. R. I. A. Sup. 135).

3. A — made by a father as guardian of his minor daughter, to his own advantage and her prejudice, was set aside on the ground that she was not sufficiently represented. (P. C.) 3 P. C. R. 41 (22 W. R. 290).

See Champerty 5.
Compounding.
Dower 9.
Estoppel 14.
Execution of Decree 39.
Hindoo Law (Religious Ceremonies) 1.
Joint Stock Company 1.
Limitation 21.
,, (Act XIV of 1859) 11.
See Limitation (Act IX of 1871) 28.
,, (Act XV of 1877) 30.
Mesne Profits 6.
Mortgage 8.
Partition 4, 22.
Partnership 15.
Principal and Surety 3.
Privy Council 24.
Registration 51, 52.
Res Judicata 32.

Concealment.

See Cumulative Sentences 3.
Forgery 3.
Letters of Administration 1.
Mortgage 30, 110.
Relinquishment 3.

Conditional Sale.

1. Where a vendee took a deed of — from the vendors to act upon it in case he should think it right, but did not think it right to do so, and having kept it for a long time without acting upon it in his lifetime: *Held* that there was sufficient evidence in this and other circumstances of the case to conclude that it was not a *bonâ fide* conveyance against *bonâ fide* purchasers. (P. C.) 3 P. C. R. 480 (L. R. 5 I. A. 18; I. L. R. 3 Cal. 397).

2. Until foreclosure, the vendee, under a bond of —, holds the lands, the subject of the bond, only as security for the money lent. *Semble:* the effect of foreclosure is to put an end to the original — and to make the property *ab initio* the immoveable property of the person who advanced the money. I. L. R. 3 Cal. 508.

See Court Fees 8.
Estoppel 10.
Limitation (Act IX of 1871) 45.
Mortgage 9, 17*a*, 17*b*, 23, 30, 59, 62, 64, 65, 66, 112.
Pre-emption 18.

Confession.

See Accomplice 2.
Evidence (Admissions and Statements) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.
Evidence (Corroborative) 1, 2, 3, 4, 5.
Magistrate 3, 4, 5, 6, 7.

Confiscation.

See Cotton Frauds (Bombay) 2.
Oudh 4, 5.
Oudh Estate 1, 8, 11.
Sale 1.
Summary Trial 1.

Conjugal Rights.

1. A Mahomedan husband may sue for the restitution of —, to be enforced, in case of disobedience, by imprisonment, or attachment, or both, under Act VIII of 1859 s. 200; and such suit must, under Reg. IV of 1793 s. 15 and the nature of the thing, be determined according to the principles of Mahomedan law. If the wife pleads cruelty, she must prove violence of such a character as to endanger, or a reasonable apprehension of danger to her personal health or safety. The *ratio decidendi* in such a case discussed. (P. C.) 2 P. C. R. 59 (8 W. R., P. C., 3; 11 Moo. 551).

2. In a suit by a Hindoo husband against his wife for the restitution of —, the criterion of legal cruelty, justifying

CONJUGAL RIGHTS (*continued*).

the wife's desertion, is the same in this country as in England, *viz.*, whether there has been actual violence of such a character as to endanger her personal health or safety, or whether there is the reasonable apprehension of it. I. L. R. 1 Bom. 164.

3. *Semble* that a decree for restitution of — between Mahomedans or Hindoos may be enforced under Act VIII of 1859 s. 200. *Ib.*

4. When a Mahomedan sues his wife for restitution of —, such suit is to be determined with reference to Mahomedan law, and not with reference to the general law of contract. I. L. R. 1 All. 483.

5. A suit for restitution of — may be maintained by a Hindoo: but *quære* if the same state of circumstances which would justify such a suit, or which would be an answer to such a suit in the case of an European, would be equally so in the case of a Hindoo. (O. J. Ap.) I. L. R. 5 Cal. 500.

6. Where cruelty on the part of the husband has been condoned by the wife, a much smaller measure of offence would be sufficient to neutralize the condonation, than would have justified the wife, in the first instance, in separating from her husband. But the act or acts constituting the offence must be of such a nature as to give the wife just reason to suppose that the husband is about to renew his former course of conduct and consequently to entertain well-founded apprehension for her personal safety. (O. J. Ap.) *Ib.*

See Divorce 3.
Dower 13.

Consent.

1. The mere attestation of a deed of sale by a relative does not necessarily import his concurrence. (P. C.) 2 P. C. R. 275 (12 W. R. P. C. 47; 13 Moo. 209; 3 B. L. R., P. C., 57).

See Ancestral Property 1.
Benamee 10.
Building 1.
Cattle-Grazing 1.
Co-Sharers 17, 18.
Criminal Proceedings 57.
Decree 8.
Divorce 6.
Endowment 5, 18, 32.
Enhancement 14, 17.
Estoppel 17.
Execution of Decree 5.
Gift 16.
Guarantee 1.
High Court 38.
Hindoo Law (Adoption) 1, 2, 12, 17, 28, 30, 38, 39.
Hindoo Law (Coparcenary) 2, 15, 21.
,, Widow 6, 61.
Hoondee 1.
Husband and Wife 6.
Instalments 6.
Jurisdiction 8.
Land Dispute 4.
Marriage 7.
Practice (Suit) 19.
Pre-emption 17.
Ryotwaree Tenure 1.
Sale (for Arrears of Revenue) 3.
Self-acquired Property 1.
Succession 2.
Theft 1.
Transferable Tenure 1.
Trust 8.
Vendor and Purchaser 9.
Will 11, 16.

Consideration.

1. Inadequate —. *See* Deed of Sale 7; Gift 8; Interest 11; Sale (in Execution of Decree) 6; Trust 5.
2. Part —. *See* Registration 15.
3. Immoral —. *See* Contract 18.
4. Unlawful —. *See* Principal and Surety 6.

See Champerty 4.
Contract 3, 16.
Deed of Sale 2, 3.
Evidence 8.
Gift 6, 7, 8, 10, 18.
Guardian and Minor 17.
Hindoo Law (Alienation) 1.
Hindoo Widow 19.
Hoondee 2, 4.
Instalments 1.
Maintenance 4.
Mortgage 1, 5, 8, 44, 65, 106.
Nudum Pactum.
Principal and Surety 5, 6.
Privy Council 11.
Promissory Note 2.
Purchase-money 1.
Putnee 8.
Registration 1, 22, 24, 25, 54.
Sale (in Execution of Decree) 51.
Sheriff 7.
Stamp Duty 3, 4.
Vendor and Purchaser 1, 3.

Consignment.

See Bill of Exchange 4.
Bill of Lading 1, 2.
Hoondee 10.
Lien 1.
Railway 3, 4, 5, 6, 7, 8.

Construction.

1. Native deeds and contracts ought to be construed liberally, regard being had to the real meaning of the parties, rather than to the form of expression. (P. C.) 2 P. C. R. 29 (13 W. R. 81*n*; 6 Moo. 393).

2. Where the Court of first instance puts upon its own decree a — which to the Appellate Court appears to render the decree erroneous, and the decree, on the face of it, admits of another — which to the Appellate Court appears to render the decree correct, the Appellate Court will adopt the latter —. (O. J. Ap.) I. L. R. 1 Bom. 1.

3. A penal statute should, when its meaning is doubtful, be construed in the manner most favorable to the liberties of the subject; more especially so when the penal enactment is of an exceptional character. (F. B. Cr.) I. L. R. 1 Bom. 308.

4. When Acts are *in pari materiâ*, they may be treated as forming a Code, and may be read together; but, when this is not so, the — which has been put upon one cannot be relied upon as a guide to the — of another. (F. B.) I. L. R. 4 Bom. 515.

5. Of "children." *See* Illegitimate 2.
6. Of ambiguous stipulation in a deed. *See* Partnership 9.
7. Of "*mafee-birt* tenure." *See* Mafee-Birt Tenure 1.
8. Of "mokurraree." *See* Mokurruree 10.
9. Of "mokurruree istemraree." *See* Mokurruree 3.
10. Of "must," "shall," and "may." *See* Limitation (Act XIV of 1859) 14.
11. Of "suit for land." *See* Jurisdiction 15.
12. Of "true and just accounts." *See* Master and Servant 1.
13. Of "defaulting rate." *See* Interest 11.

CONSTRUCTION (*continued*).

14. Of wills of Hindoos. *See* Will 27, 60.

15. Of "voluntarily," "intentionally," "fraudulently," "dishonestly," etc. *See* Compounding 1.

16. Of "to reclaim land from the sea." *See* Reclaimed Land 1.

17. Of "villages" or the like in a grant. *See* Grant 1.

18. Of *enam* grant of a village "including the waters, the trees, the stones and quarries, the mines, and the hidden treasures, but excluding the Hukdars and Enamdars." *See* Enam 2.

19. Of "justice, equity, and good conscience." *See* Estoppel 10.

20. Of "judgment." *See* Arbitration 13; High Court 32.

21. Of "*pootro pootradi.*" *See* Will 62.

22. Of "consideration." *See* Mortgage 106.

23. Of "sunk" in a policy of marine insurance. *See* Insurance 7.

24. Of "wanta" "gards," "mazmun," "narva," and "bhagdar." I. L. R. 4 Bom. 367.

25. Of "It shall be lawful" in 11 and 12 Vic. c. 21 s. 9. *See* Insolvency 18.

Of "property" in ditto ditto s. 26. *See* Insolvency 5.

Of "without having any reasonable or probable expectation, at the time when contracted, of paying them" in ditto ditto s. 51. *See* Insolvency 21.

26. Of "clear and positive proof" in Reg. III of 1793 s. 14. *See* Limitation (Reg. III of 1793 s. 14) 1.

27. Of "legal representative" in Reg. XVII of 1806 s. 8. *See* Mortgage 59.

28. Of "substantial" in Reg. VIII of 1819 s. 8. *See* Putnee 6.

Of "sufficient plea" in ditto s. 14. *See* Putnee 7.

29. Of "immoveable property" in Reg. V of 1827 (Bombay) s. 1 cl. 1. *See* Desai 2.

30. Of "cause of action" in Act VIII of 1859 s. 2. *See* Cause of Action 1.

Of "no appeal shall lie from a judgment passed *ex-parte* against a defendant who has not appeared" in ditto s. 119. *See* Ex-parte 1.

Of "for the execution of the decree" in ditto s. 197. *See* Mesne Profits 9.

Of "all other property whatsoever, moveable or immoveable," in ditto s. 205. (P. C.) 2 P. C. R. 434 (7 B. L. R. 186 ; 14 Moo. 40).

Of "award" and "sufficient cause" in ditto s. 327. *See* Arbitration 5.

31. Of "arrears of estates under attachment" in Act XI of 1859 s. 5. *See* Sale (for Arrears of Revenue) 2.

32. Of "charge on the inheritance of any estate" in Act XIV of 1859 s. 1 cl. 13. *See* Limitation (Act XIV of 1859) 15.

Of "some proceeding" in ditto s. 20. *See* Limitation (Act XIV of 1859) 1.

Of "purchaser" in ditto ditto. *See* Limitation (Act XIV of 1859) 3.

Of "nothing in the preceding section shall apply to a judgment in force at the time of the passing of the Act," and "*but* process of execution *may* be issued" in ditto s. 21. *See* Limitation (Act XIV of 1859) 14.

33. Of "publicly or actually used" in Act XV of 1859 s. 23. *See* Patent 2.

34. Of "direction of law" in Act XLV of 1860 s. 217. *See* Public Servant 2.

Of "public spring or reservoir" in ditto s. 277. *See* Public Spring or Reservoir 1.

35. Of "party to suit" in Act XXIII of 1861 s. 11. *See* Execution of Decree 4. *See* Sale (in Execution of Decree) 4.

Of "stranger" in ditto s. 14. *See* Puttee 1.

36. Of "attachment or sale by the process of any Civil Court" in Act V of 1862 (Bombay) s. 1. *See* Mortgage 46.

37. Of "Court of highest civil jurisdiction in any province" in Act II of 1863. *See* Privy Council 29.

38. Of "may" in Act XX of 1864 s. 11. *See* Guardian and Minor 34.

39. Of "village cattle" in Act I of 1865 (Bombay) s. 32. *See* Cattle-Grazing 1.

40. Of "landholder" in Act VIII of 1865 (Madras). *See* Assignment 4.

41. Of "having an interest in the estate of the deceased" in Act X of 1865 s. 250. *See* Will 26.

42. Of "general jurisdiction" in Act XI of 1865 s. 20. *See* Small Cause Court 11.

43. Of "defect in procedure" in Act XX of 1866 s. 88. *See* Registration 8.

44. Of "include" in Act I of 1868 s. 2 cl. 13, etc. *See* Magistrate 4.

Of "any proceeding" in ditto s. 6. *See* High Court 30.

45. Of "desertion" in Act IV of 1869 s. 3 cl. 9. *See* Divorce 7.

46. Of "arrear" in Act VIII of 1869 (Bengal) s. 29. *See* Limitation 49.

Of "no process of execution of any description whatsoever shall be issued on a judgment in any suit . . . after the lapse of three years" in ditto s. 58. *See* Limitation 25.

47. Of "officer of Government" in Act XIV of 1869 (Bombay) s. 32. *See* Guardian and Minor 14 ; Municipal 3.

48. Of "land" in Act VII of 1870 s. 7 cl. 8. *See* Attachment 10.

Of "distinct subjects" in ditto s. 17. *See* Court Fees 8.

Of "value" in ditto sch. 1 art. 11. *See* Will 29.

Of "summary decisions or orders" in ditto Sch. 2 Art. 17. *See* Court Fees 14.

49. Of "artizan" in Act III of 1871 (Madras). *See* Artizan 1.

50. Of "an undertaking to cultivate or occupy" in Act VIII of 1871 s. 3. *See* Registration 36.

Of "present or future," "vested or contingent" in ditto s. 17. *See* Registration 19.

51. Of "suit" in Act IX of 1871 and in s. 15. *See* Limitation (Act IX of 1871) 17, 25.

Of "in trust for any specific purpose" in ditto s. 10. *See* Limitation (Act IX of 1871) 14, 84.

Of "vested in trust" in ditto ditto. *See* Limitation (Act IX of 1871) 26.

Of "promise" in ditto s. 20. *See* Limitation (Act IX of 1871) 30.

Of "agent generally or specially authorized" in ditto ditto. *See* Limitation (Act IX of 1871) 38.

Of "signed" in ditto ditto. *See* Limitation (Act IX of 1871) 68.

Of "debt" in ditto ss. 20 and 21. *See* Limitation (Act IX of 1871) 21, 81.

Of "interruption," "abandonment," and "discontinuance" in ditto s. 27. *See* Limitation (Act IX of 1871) 9.

Of "easement" in ditto ditto. *See* Limitation (Act IX of 1871) 36, 55.

Of "actual possession" in ditto sch. 2 art. 10. *See* Limitation (Act IX of 1871) 45.

Of "from the date of the obstruction" in ditto art. 31. *See* Limitation (Act IX of 1871) 6.

Of "order respecting the possession of the property" in ditto Art. 46. *See* Limitation (Act IX of 1871) 35.

Of "avoid" in ditto arts. 119 and 120. *See* Limitation (Act IX of 1871) 82.

Of "conveyed in trust" in ditto art. 134. *See* Limitation (Act IX of 1871) 26.

Of "in good faith" in ditto ditto. *See* Limitation (Act IX of 1871) 26.

Of "process for enforcing" in ditto art. 157. *See* Limitation (Act IX of 1871) 13.

Of "final decree" in ditto art. 167. *See* Limitation (Act IX of 1871) 49.

Of "applying to enforce the decree" in ditto ditto. *See* Limitation (Act IX of 1871) 53.

Of "application" in ditto ditto. *See* Limitation (Act IX of 1871) 56.

Of "date of applying" in ditto ditto. *See* Limitation (Act IX of 1871) 59.

Of "where there has been an appeal" in ditto ditto. *See* Limitation (Act IX of 1871) 89.

52. An enactment of a character so arbitrary as Act XXIII of 1871 ought to be construed strictly, and the Court should not extend its operation farther than the language of the Legislature requires. I. L. R. 1 Bom. 523.

The above Act should receive a strict — as being in derogation of the right of the subject to resort to the ordinary Civil Courts. I. L. R. 1 Bom. 531.

It is not retrospective. I. L. R. 2 Bom. 294.

Of "right" in above Act s. 3. *See* Toda Giras Huk 3, 5.

Of "grant of money and land revenue" and "anything payable on the part of Government in respect of any right, privilege, perquisite, or office" in ditto ditto. *See* Grant 6.

CONSTRUCTION (*continued*).

Of "pension" in ditto s. 11. *See* Toda Giras Huk 5.
53. Of "Police Officer" in Act I of 1872 s. 25. *See* Evidence (Admissions and Statements) 3.
Of "Magistrate" in ditto ditto. *See* Magistrate 4.
Of "Court" in ditto s. 30. *See* Evidence (Corroborative) 5.
Of "public document" in ditto s. 74. *See* Evidence (Documentary) 8.
54. Of "possession" in Act IX of 1872 s. 178. *See* Bailment 3.
Of "trial" in Act X of 1872 s. 4. *See* Bench of Magistrates 1.
Of "modify" in ditto s. 18 cl. 2. *See* Enhancement 34.
Of "transfer" in ditto s. 56. *See* Jurisdiction 16.
Of "agent" in ditto s. 90. *See* Information 1.
Of "complainant" in ditto s. 210. *See* Contempt of Lawful Authority of Public Servant 2.
Of "dissent" in ditto s. 263. *See* Jury 7.
Of "judgment of acquittal" in ditto s. 272. *See* Murder 2.
Of "Session case" in ditto s. 296. *See* Commitment 1, 9.
Of "material error" in ditto s. 297. *See* High Court 33.
Of "accused person" in ditto s. 390. *See* Bail 1.
Of "Court of Appeal" in ditto s. 419. *See* Stolen Property 1.
Of "at any time" in ditto s. 470. *See* Criminal Proceedings 18.
55. Of "binding on all parties" in Act II of 1874 s. 63. *See* Administrator-General 3.
56. Of "premises" in Act III of 1876 (Bombay) s. 4. *See* Mamlutdar 3.
57. Of "revival of a prosecution" in Act IV of 1877 s. 87. *See* Discharge 5.
58. Of "judicial proceeding." *See* High Court 30, 37.
59. The term "judicial proceeding," as used in Act X of 1877 s. 2, must be understood to mean a judicial proceeding of the same nature as a suit or such proceedings as are referred to in ss. 333, 522, 526, and 531. The definition given in Act X of 1872 is not applicable (O. J. Ap.) I. L. R. 2 Bom. 553.
Of "procedure" in same Act s. 3. *See* High Court.
Of "decree" in ditto ditto. *See* High Court 30; Practice (Commissions) 5.
Of "any Court other than a District Court" and "any Court situate in his District" in ditto s. 5. *See* Small Cause Court 19.
Of "the last preceding application" in ditto s. 230 cl. 3. *See* Execution of Decree 33.
Of "material irregularity" in ditto s. 311. *See* Sale (in Execution of Decree) 45.
60. Of "easement" in Act XV of 1877 s. 3. *See* Limitation (Act XV of 1877) 42, 43.
Of "appeal" and "Appellate Court" in ditto sch. 2 art. 179. *See* Limitation (Act XV of 1877) 35.
61. Of "final order" and "instrument of partition" in Act I of 1879. *See* Stamp Duty 23.
62. Of "decree in Act XII of 1879 s. 2. *See* Plaint 5.
63. Of "agriculturist" in Act XVII of 1879 s. 2 cl. 2. *See* Deccan Agriculturists Relief 3.

See **Account 3.**
Boundary 2.
Costs 1.
Court Fees 15.
Custom 7.
Dower 2.
Endowment 1, 8, 9, 27.
Gift 3.
Grant 1, 3, 4, 5, 6.
High Court 18.
Hindoo Law (Inheritance and Succession) 16.
,, Widow 15.
Insurance 2, 7.
Interest 3.
Lease 5.
Limitation 17.
,, (Act XIV of 1859) 8.
,, (Act IX of 1871) 15.
See **Limitation (Act XV of 1877) 12, 28.**
Mahomedan Law 1, 5.
Mesne Profits 5.
Mokurruree 5.
Mortgage 15, 17*a*.
Partnership 8, 9.
Pension 4.
Pottah 3.
Purdah Woman 1, 10.
Railway 6.
Registration 49.
Service Tenure 4.
Value of Suit or Appeal 2.
Will 2, 4, 6, 7, 14, 17, 38, 46, 49, 50, 52, 58, 60.
Zemindaree 3.

Contagious Diseases.

1. Any woman desirous of ceasing to carry on the business of a common prostitute is, under the provisions of the — Act XIV of 1868, absolutely entitled to have her name removed from the register; and any rule, or portion of a rule, purporting to have been framed under the provisions of that Act which places any obstacle in the way of her doing so, is *ultra vires* and therefore void. (Cr.) I. L. R. 6 Cal. 163.

2. Where a woman is prosecuted before a Magistrate under s. 11 of the above Act, she is not precluded from pleading that she has ceased to be a common prostitute, and that she has taken steps, under s. 21 and the rules framed thereunder, for the removal of her name from the register; and the Magistrate is competent to entertain such a defence. (Cr.) *Ib.*

Contempt of Court.

1. Giving false evidence is an offence committed in — within the meaning of Act X of 1872 s. 473. (Cr.) I. L. R. 1 Bom. 311.

2. The above section which, except as therein provided, forbids a Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under Chap. X of the Penal Code, but extends to all —. (Cr.) I. L. R. 1 Bom. 339.

3. The prohibition in Act X of 1872 s. 473 is a personal prohibition. (Cr.) I. L. R. 1 Mad. 305.

4. An offence against public justice is not an offence in — within the meaning of the above section. (Cr.) I. L. R. 1 All. 129, 162. (*Overruled by next case.*)

5. An offence under s. 193 Penal Code, being an offence in — within the meaning of Act X of 1872 s. 473, cannot, under that section, be tried by the Magistrate before whom such offence is committed. (F. B.) I. L. R. 1 All. 625.

6. The decree in an administration suit directed A, a party to the suit, to pay over a sum of money, which she admitted was in her hands, to her own attorney in the suit, to be applied by him as directed by the decree. A refused to pay over the money, and she was imprisoned for disobedience to the Court's order. After she had been in prison for six months, she applied to the Judge of the Court below, under Act X of 1877 s. 341, to be discharged. This order was refused: *Held*, on appeal, that the proceeding under which A had been imprisoned was not in execution of a decree; but that she was imprisoned under process of contempt, and that the provisions of ss. 341 and 342 did not apply to the case. (O. J. Ap.) I. L. R. 4 Cal. 655.

7. The jurisdiction of the High Court to imprison for — is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court by the Charters of the Crown, which invested it with all the powers and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain, and this jurisdiction has not been removed or affected by Act X of 1877. (O. J.) *Ib.*

8. Where a Settlement Officer, who was also a Magistrate, summoned, as a Settlement Officer, a person to attend his Court, and such person neglected to attend, and such officer,

CONTEMPT OF COURT (*continued*).

as a Magistrate, charged him with an offence under s. 174 Penal Code, and tried and convicted him on his own charge: *Held* that such conviction was, with reference to Act X of 1872 ss. 471 and 473, illegal. (Cr.) I. L. R. 2 All. 405.

Contempt of Lawful Authority of Public Servant.

1. A refusal to give a receipt for a summons is not an offence under s. 173 Penal Code. (Cr.) I. L. R. 3 Cal. 621.
2. In cases of —, the complainant referred to in Act X of 1872 s. 210 is the public servant whose authority has been resisted, and without whose sanction no criminal proceedings can be instituted against the offender, and not the person injured by the resistance. (Cr.) I. L. R. 2 Bom. 653.

Contract.

1. Agreement by Counsel. *See* Privy Council 11.
2. The breach of an agreement by one of the parties is a round for an action for damages, or for specific performance, but not for setting aside the — or declaring it null and void. (P. C.) 2 P. C. R. 774 (19 W. R. 133; 11 B. L. R. 171; L. R. I. A. Sup. 135).
3. *Held* that it would not be equitable to uphold an *ikrarnamah* executed by three young men in favor of their uncles and cousins, whereby they parted with half of their property, and executed without any consideration, and very shortly after they had come to their property and when they were not fully acquainted with their rights and do not appear to have had any professional advice, and when the appearance of their uncles with a large force, the possession taken of their property, the institution of criminal proceedings, and other circumstances constituted a state of things likely to overawe them and to affect the free exercise of their will. (P. C.) 3 P. C. R. 400 (L. R. 4 I. A. 101).
4. An agent employed by plaintiff to purchase timber for him in the Siamese territory was imprisoned by an officer of the Siamese Government, on a charge brought against him by defendant of stealing timber. In order to obtain his release, he contracted to purchase from the defendant, for the plaintiff, the timber which he was charged with stealing, at a price much beyond its value: *Held* that the plaintiff might repudiate the — as obtained under duress. (P. C.) L. R. 3 I. A. 61 (I. L. R. 1 Cal. 330).
5. In England the mere fact of imprisonment is not deemed sufficient to avoid a — made by one who is in lawful custody under the regular process of a Court of competent jurisdiction, where no undue advantage is taken of the situation of the party making the agreement. But in a country in which there is no settled system of law or procedure, and where the Judge is invested with arbitrary powers, imprisonment may in itself amount to duress such as will avoid a — entered into by the prisoner with the view of obtaining release. (P. C.) *Ib.*
6. In a suit by a Hindoo widow to have a — of sale, which her late husband entered into with the defendant, re-formed on the ground that her husband was induced to enter into it by fraudulent misrepresentations on the part of the defendant, the Privy Council, having regard to the probabilities of the case and other circumstances, was of opinion that, although there might be some suspicion of misrepresentations having been made to the husband, no sufficient case had been made out by plaintiff to set aside the — on the ground of fraud; and intimated that, even if plaintiff had been entitled to set aside the — on that ground, it did not follow that she would have been entitled to the relief she prayed for. (P. C.) 3 P. C. R. 677.
7. A — containing a clause providing, in case of any dispute, for a reference to two arbitrators, one to be appointed by each of the contracting parties, whose decision was to be final, was held not to be within the scope of Act IX of 1872 s. 28. To make an agreement conform to Excep. 1 of that section, the jurisdiction of the Courts must be excluded in all respects except the matter which is the result of the arbitrator's award. (O. J.) I. L. R. 1 Cal. 42. (Affirmed on appeal. *Ib.* 466.)
8. Agreements which exclude the jurisdiction of the Courts until an award is made, are within that Exception, and are not illegal. (O. J.) *Ib.*
9. *Semble.* It was not intended by that Exception to authorize the Court to entertain a suit for specific performance of an agreement to refer to arbitration. (O. J.) *Ib.*
10. Act IX of 1872 s. 28 does not forbid an action for damages for the breach of such an agreement. (O. J.) *Ib.*
10*a*. The above sentence only refers to contracts which wholly or partially prohibit the parties absolutely from having recourse to a Court of Law; and Excep. 1 applies only to a class of contracts where the parties have agreed that no action shall be brought until some question of amount has first been decided by the arbitrators. (O. J. Ap.) I. L. R. 1 Cal. 466.
11. Where plaintiff agreed to supply defendant with certain marketable goods (gunny bags) at specified periods, and a breach of that — was committed by defendant in not accepting the goods which plaintiffs were prepared to deliver at three of those periods, the ordinary rule as to measure of damages in such cases was followed, *viz.*, to charge defendant with the difference between the — price and the market price at the time of the breach. (O. J. Ap.) I. L. R. 1 Cal. 264 (25 W. R. 273).
12. Executory —. *See* Putnee 8.
13. Oral agreement. *See* Bill of Exchange 1, 4; Evidence 6, 7, 8, 9, 10, 11; Husband and Wife 16; Limitation 27; Limitation (Act XV of 1877) 2; Registration 1, 45, 52; Vendor and Purchaser 5.
14. — made in foreign State. *See* Jurisdiction 23.
15. Plaintiff sued to recover Rs. 643-10-6, value of 1230 paras of paddy due under an account dated 8th September 1876. The account on a *cadjan* was for Rs. 315 payable with 12 per cent. interest within 15 days, and, in default, plaintiff to be paid, on 14th November 1876, paddy for the amount due calculated at the rate of 4 as. 7 pies per para. Immediately after the execution of this agreement the price of rice rose, the defendant did not pay within the 15 days, and in the plaint in this suit the price of rice was calculated at 8 as. per para: *Held* that the bargain was unconscionable. Under Act IX of 1872 s. 74, in a case falling within its terms, only reasonable compensation could be given, which in the present case would be interest at a somewhat high rate. The — in effect was that, if principal with 12 per cent. were not paid on 22nd September, double the amount should be payable on 15th November. Such a — a Court of Equity would not enforce. I. L. R. 1 Mad. 349.
16. Where, in consideration of A giving time to satisfy a decree held against him by A, B agreed not to appeal against the decree and did delay: *Held* that the agreement was not prohibited by Act IX of 1872 s. 28, and that the Appellate Court was bound by the rules of justice, equity, and good conscience to give effect to it, and to refuse to allow B to proceed with the appeal which he had instituted in contravention of it. (F. B.) I. L. R. 1 Cal. 267.
17. Agreement uncertain or ambiguous. *See* Mortgage 51.
18. M had for many years lived with G as his concubine. In consideration of such past cohabitation, G, by an agreement in writing dated 28th March 1869 and duly registered, settled an annuity on M, charging a portion of his real estate with the payment of such annuity: *Held* in a suit by M against G's heir, his married wife, to enforce the agreement, that the consideration for the agreement was not, under the law then in force, immoral, nor was the agreement, under the same law, void for want of consideration. *Held* also that, before M could recover from the defendant on the agreement, it was necessary to show that the defendant had received funds available to meet the claim from the profits of the estate charged with the payment of the annuity, or other property of G. I. L. R. 1 All. 478.
19. To a — between the plaintiffs and the defendant, for the purchase by the defendant of a cargo of salt, the plaintiffs, after the — had been signed by the defendant, added in the margin "Ten days demurrage will be allowed at Rs. 250 per diem": *Held* that the addition of the words in the margin did not amount to an alteration within the rule of English law, as the alteration must be either something which appears to be attested by the signature or something which alters the character of the instrument. (O. J.) I. L. R. 3 Cal. 220.
20. Joint —. *See* Promissory Note 3.
21. Act IX of 1872 s. 39 only enacts what was the law in England and in India before the Act was passed, *viz.*,

CONTRACT (*continued*).

that where a party to a — refuses altogether to perform, or is disabled from performing, his part of it, the other party has a right to rescind. (O. J. Ap.) I. L. R. 4 Cal. 252.

22. In a suit for damages for the non-delivery of linseed upon a — the terms of which as to payment were cash on delivery, part delivery had been made by the defendant, and a sum of Rs. 1000 had been paid on account by the plaintiffs. The plaintiffs then made a claim against the defendants for excess refraction, and the defendants thereupon refused to deliver the remainder of the linseed unless the plaintiffs paid the full amount owing for the portion that had been delivered. The plaintiffs declined to accept these terms, and the defendants then cancelled the —: *Held* that there was not such a refusal on the part of the plaintiffs to perform their part of the — as to entitle the defendants to rescind under Act IX of 1872 s. 39. *Quære* whether s. 51 of the Act was applicable, and whether time was of the essence of the — within the meaning of s. 55. (O. J. Ap.) *Ib.*

23. A mistake as to existing facts may invalidate a —; but an erroneous expectation, which events entirely falsify, has no effect. I. L. R. 3 Bom. 154.

24. Agreement affecting land. *See* Husband and Wife 16.

25. Joint and several —. *See* Res Judicata 30.

26. Implied —. *See* Small Cause Court 30.

27. The plaintiffs sued for specific performance of an agreement in writing, which set forth, *inter alia*, that the defendants had agreed to sell, etc., under "certain conditions as agreed upon." The defendants alleged, that the written agreement did not contain the whole of the agreement between the parties, and offered parol evidence in support of their contention: *Held* that the parol evidence was admissible to show what was meant by the clause "certain conditions as agreed upon." (O. J. Ap.) I. L. R. 6 Cal. 328.

28. Discussion as to the meaning of Act I of 1872 s. 92, and of the Specific Relief Act I of 1877 ss. 17, 22, and 26, in reference to specific performance. (O. J. Ap.) *Ib.*

29. It is of the essence of specific performance that part only of an agreement should not be performed. (O. J. Ap.) *Ib.*

See Arbitration 9.
Attorney and Client 1, 2.
Breach of Contract.
Building 8.
Caste 1.
Conjugal Rights 4.
Construction 1.
Contract (for Work or Labor).
Co-Sharers 17, 18.
Court of Wards 1.
Deed of Sale 2.
Endowment 16.
Enhancement 14.
Guarantee.
Hindoo Law (Adoption) 20, 23, 36.
,, (Coparcenary) 24.
Hindoo Widow 59.
Hoondee 4.
Indemnity 1.
Instalments 6.
Interest 8, 10, 11, 14.
Landlord and Tenant 1, 2, 10.
Limitation (Act XIV of 1859) 4.
,, (Act IX of 1871) 14, 66, 87.
Lumbardar 8.
Maintenance 4, 8.
Marriage 6.
Master and Servant 1.
Misrepresentation 1.
Mortgage 15, 18, 22, 30, 72, 85, 134, 135.
Municipal 15.
Partnership 8, 13, 15.
Pre-emption 7, 9, 17, 18.
Principal and Agent 7, 8, 10, 12.
Railway 6.
Registration 1, 4, 26, 45.
Restraint of Trade 1.
Road Cess 2.
Sale 5, 6, 7, 9.
,, (for Arrears of Revenue) 3.
,, (in Execution of Decree) 55.
Set-off 2.
Shipping 1, 2.
Small Cause Court 2, 7, 18.
Stamp Duty 15.
Streedhun 8.
Vendor and Purchaser 9.
Will 89.

Contract (for Work or Labor).

1. A — to supply laborers and to get labor performed by them, even though the nature and extent of the work are not clearly specified, falls within the provisions of Act XIII of 1859. I. L. R. 1 Mad. 280.

See Principal and Surety 9, 10.
Restraint of Trade 1.

Contribution.

1. The defendant became a purchaser at an execution-sale of a share of certain property of which the plaintiff held another share partly as zemindar and partly as durputneedar. The sale took place in September 1872, but the defendant did not obtain possession until confirmation of the sale in May 1873. Between the date of the sale and the confirmation, a considerable sum became due for Government revenue on the whole property, and to prevent its being sold, the plaintiff paid the whole of the revenue due. In a suit to recover the proportion due in respect of the share purchased by the defendant: *Held* that, on confirmation of the sale, the share purchased by the defendant must be considered to have vested in her from the date of the sale, and therefore she was liable for the amount of Government revenue in respect of her share which became due between the date of the sale and its confirmation. (F. B.) I. L. R. 2 Cal. 141.

2. The question as to whether as between persons against whom a joint decree has been passed there is any right of — at all, depends upon the question whether the defendants in the former suit were wrong-doers in the sense that they knew, or ought to have known, that they were doing an illegal or wrongful act. In that case no suit for — will lie. If the defendants in the former suit were not guilty of wrong in that sense, but acted under a *bonâ fide* claim of right, and had reason to suppose that they had a right to do what they did, then they may have a right of — *inter se*; and in such case the Court should enquire what share they each took in the transaction; because, according to circumstances, one or more of them might be excused altogether, or in part, from contributing; as for instance, one of them might have acted as a servant and by the command of the others, or the others might have been the only persons benefited by the wrongful act, in which case those who were benefited, or who ordered the servant to do the act, would not be entitled to —. I. L. R. 5 Cal. 720.

See Jurisdiction 26.
Landlord and Tenant 7.
Limitation (Act IX of 1871) 76.
Mortgage 57, 81 86, 117.
Reimbursement.
Small Cause Court 30.

Conversion.

1. — of Azeemabadee rupees into Company's rupees. *See* Special Appeal 1.
2. — to Christianity. *See* Will 10*a*.

See Ancestral Property 6.
Husband and Wife 5, 10.
Jurisdiction 15.
Landlord and Tenant 1.
Marriage 14.
Mortgage 62.
Partnership 18.
Reclaimed Land 1.
Timber 1.

Conveyance (Transfer and Assignment).

1. A transfer of property, of which the transferor is not at the time of the transfer in possession, is not *ipso facto* void. I. L. R. 1 Cal. 297.

2. A transfer of mortgaged property made in contravention of a condition not to alienate is not absolutely void, but voidable in so far as it is in defeazance of the mortgagee's rights. Where, in contravention of a condition not to alienate, the mortgagor had transferred his proprietary right in the mortgaged property to a third person for a term of years, the Court declared that such transfer could not be binding on a purchaser at the sale in execution of the decree obtained by the mortgagee for the sale of the property in satisfaction of the mortgage-debt, unless such purchaser desired its continuance. I. L. R. 1 All. 126.

So a lease of mortgaged property was declared not binding on an auction-purchaser. I. L. R. 1 All. 610.

See Assignment 2, 3, 4, 5.
Attorney and Client 11.
Bill of Exchange 1.
Champerty 5.
Debtor and Creditor 2, 5.
Endowment 23, 24.
Husband and Wife 10, 11.
Insolvency 6, 7.
Joinder of Causes of Action 2.
Jurisdiction 53.
Lien 3.
Limitation (Act XV of 1877) 34.
Meerasee 2.
Misrepresentation 1.
Mortgage 77, 78, 131.
Putnee 3, 4, 13.
Registration 25, 45.
Stamp Duty 3, 4, 6.
Will 39, 44.

Convict.

See Bail 1.
Practice (Appeal) 17.
Trust 9.

Conviction.

1. Previous —. *See* Jury 1; Practice (Criminal Trials) 4.

See Abetment 1.
Criminal Proceedings 9.
Evidence (Admissions and Statements) 6.
,, (Corroborative) 1.
High Court 3, 5, 6, 7, 12.
Murder 4, 5.

Coparceners.

See Co-Sharers.
Hindoo Law (Coparcenary).
Pre-emption.

Co-plaintiffs.

See Relief 4.
Slander 1.

Corporation.

See Libel 1, 2, 3, 4.

Co-Sharers.

1. It does not follow that, because a man who was tenant-in-common has received something, and has then sold it to another tenant-in-common, a third tenant-in-common can make the purchaser answerable personally for that which was received by the person who has relinquished in his favor. (P. C.) 2 P. C. R. 438 (16 W. R. P. C. 1; 8 B. L. R. 93).

2. Plaintiff and defendants were heirs of a deceased creditor, in satisfaction of part of whose debt a large sum was paid by the debtor, which was appropriated by defendants, so that plaintiff lost a part of his share and defendants got more than they were entitled to. In a suit by plaintiff for his full share, it was held that all he could recover was the excess received by defendants, and that limitation ran not from the date of the original payment, but from the time that defendants received more than their proper share. (P. C.) 2 P. C. R. 459 (16 W. R. P. C. 20; 9 B. L. R. 348).

3. If *ijmalee* property is let to a tenant at an entire rent, the rent is due in its entirety to all the —, and all are bound to sue for it; no one of the — can sue to recover the amount of his share separately, whether the other — are made parties or not. But if the land demised ceases to be *ijmalee*, and different portions of it become the property of different owners, any one of the owners may sue for so much of the rent as he considers himself entitled to, making the other owners parties to the suit. I. L. R. 4 Cal. 89.

4. Where — of *ijmalee* land let to a tenant at an entire rent brought a suit against their tenant to recover their proportionate shares of the rent, and made the other — defendants, avowedly for the purpose of obtaining an adjudication of their title as between themselves and the defendants other than the tenant: *Held* that as the area of the property had not been divided, as the rent had always been paid in its entirety, and as the title of all the — remained *ijmalee*, the suit would not lie. *Ib.*

5. Where it has been arranged between the — of an estate and their tenant that he shall pay each co-sharer his proportionate share of the entire rent, each co-sharer may bring a separate suit against the tenant for such proportionate share. In the absence of such an arrangement, no such suit can be maintained. Such an arrangement may be evidenced either by direct proof, or by usage, from which its existence may be presumed, and is perfectly consistent with the continuance of the original lease of the entire tenure. (F. B.) I. L. R. 4 Cal. 96.

6. But an arrangement of the above nature will not enable one co-sharer to sue the tenant for a kubooleut, for a co-sharer who obtains a kubooleut is bound at the request of the tenant to give him a pottah upon the same terms, and the grant and acceptance of a binding lease of any separate share cannot exist contemporaneously with the original lease of the entire tenure. The cancellation and determination of the original lease ought not to be presumed from the mere fact of a separate payment of rent to one or more of the —. (F. B.) *Ib.*

7. Where a tenant, who held under — to whom he had been accustomed to pay his rent jointly, was sued by one of the —, the others being made parties to the suit, and pleaded that he had paid the rent to his co-defendants who admitted receipt thereof: *Held* that the suit should be dis-

CO-SHARERS (*continued*).

missed, the remedy of the co-sharer who has not received his share of the rent being against his —, not against the tenant. I. L. R. 4 Cal. 350.

8. The plaintiffs and defendants were owners of an undivided estate. Besides their share as part-owners, the plaintiffs held some of the estate as tenants and some as purchasers from some of their — in the estate. The whole estate was partitioned under Reg. XIX of 1814, and on such partition the lands which the plaintiffs held as tenants and as purchasers were allotted to — other than those under whom the plaintiffs held or from whom they purchased. In a suit by the plaintiffs for declaration of their title to those lands, and for a re-distribution of the shares: *Held* that the Court had no jurisdiction to entertain a suit to alter a partition effected by the revenue authorities; and that one co-sharer in a joint and undivided estate cannot deal with his share so as to affect the other —, but his assignee takes subject to their rights; that the plaintiffs were not entitled to the relief they sought for, and that their suit must be dismissed. I. L. R. 4 Cal. 510.

9. Two out of certain — in a *putnee* talook executed a mortgage-bond with the object of paying off a quota of the rent due on the estate. In a suit brought on the bond to which all the — were defendants: *Held* that the liability under the bond only extended to the — who actually signed the document, and to such of the other — as, by their presence at the time when the bond was executed, might impliedly be considered to have acquiesced in such execution. I. L. R. 4 Cal. 539.

10. A co-sharer on the allegation that a tenant, in collusion with the rest of the — in the estate, had withheld the payment of his rent (hitherto paid jointly to all the —), brought a suit for the recovery of his share of the rent, making the tenant and all the colluding — defendants in the suit: *Held* that such suit was maintainable. I. L. R. 4 Bom. 556.

11. Where a clause of the *wajib-ul-urz* of a village stated in general terms that absconders from such village should receive back their property on their return, and certain persons who absconded from such village before such *wajib-ul-urz* was framed, sued to enforce such clause against the purchaser of their property from the — who had taken possession of it on their absconding, and who was no party to such *wajib-ul-urz*, alleging that their property had vested in such — in trust for them: *Held* that before such — could be taken to have held their property as a trustee there must be evidence that he accepted such trust, and this fact could not be taken as proved by the *wajib-ul-urz*; also that, assuming the trust to be established, as the purchaser had purchased in good faith for value and without notice of the trust, and was not the representative of such — within the meaning of Act IX of 1871 s. 10, and had been more than twelve years in possession, the suit was barred by limitation. I. L. R. 2 All. 394.

12. One of several — has no right to take exclusive possession of any portion of the land of which he is one of the — without the sanction of all his —; and when after he has taken such exclusive possession an order has been made by a Magistrate acting under Act X of 1872 s. 530 confirming the possession taken by him, such order is no answer to a suit brought by one of his — to recover joint possession of the portion of land so wrongfully taken by him into his exclusive possession. I. L. R. 5 Cal. 188.

13. One of several — has no right to erect a *nowbutkhana*, or a scaffolding supporting a platform, for the accommodation of musical performers upon land of which he is only one of several —, without the sanction of all his —. *Ib.*

14. A sale of a share in a tenure, let out to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent; but if a purchaser of the share desires to have such a severance, he is entitled to enforce it. If he takes no steps for that purpose, then the tenant is justified in paying the entire rent to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure and an apportionment of the rent, he must give the tenant due notice to that effect, and then if the parties cannot agree to an apportionment, the purchaser may sue the tenant for the purpose of having the rent apportioned, making all the other — parties to the suit. (F. B.) I. L. R. 5 Cal. 902.

15. It is impossible upon principle to distinguish cases where a tenure is sold privately from those where it is sold by public auction, or, on the other hand, to distinguish cases where a tenure is severed by different portions of its area being sold to different persons, from those where it is sold to different persons in undivided shares. In all such cases the entirety of the joint interest should be considered as severable at the option of the purchaser. (F. B.) *Ib.*

16. The plaintiff, alleging himself to be a fourteen-anna shareholder in a zemindaree, sued for a proportionate share of the rent due to him as such shareholder. The other — were made defendants, but did not contest the suit: *Held* that inasmuch as it had been shown that the tenant defendant had, on previous occasions, paid the plaintiff rent separately, though not in the proportionate share now demanded by him, and it being further to be presumed that the — admitted the plaintiff's claim, such suit would lie. I. L. R. 5 Cal. 915.

17. Where, on the consent of all the shareholders, landlords, a tenant in an undivided property has agreed to pay the different sharers the rent of the tenure in proportion to their respective shares, and can be and has been sued for the rent of a particular share, it is not open to such tenant to cease from paying the proportionate fraction of the rent due in accordance with his agreement, except on the consent of the owner of that particular share. I. L. R. 5 Cal. 941.

18. Where — in an undivided property acquiesce in a decision declaring one of their number the owner of a recognized share in such property, it is not open to a tenant (who had previously agreed to pay his rent in accordance with the shares of the respective part owners) to refuse payment of the proportionate share of the rent claimed by such co-sharer as the owner of the recognized share, simply on the ground that he had never before paid rent so proportioned to such co-sharer. *Ib.*

See Ancestral Property 2.
Building 2.
Contribution 1.
Enhancement 14, 17, 21, 22.
Interest 8.
Julkur 9.
Jurisdiction 15, 29.
Land Dispute 4.
Limitation 4, 14, 26.
,, (Act IX of 1871) 2.
Lumbardar 1, 2, 3, 4, 5.
Manager 3, 4.
Mesne Profits 12.
Mortgage 109.
Partition (Butwarra) 2.
Pre-emption 2, 16, 17.
Puttee.
Res Judicata 30, 37.
Right of Occupancy 3.
Sale (for Arrears of Revenue) 4, 5.
Trust 10, 11, 12.

Costs.

1. Where an order of the Privy Council, in reversing the decrees of both Indian Courts, directed that the — of the suit, so far as they had been occasioned by the improper plea of limitation, should be paid by defendants to plaintiffs: *Held*, upon the true construction of the order, that the intention of the Privy Council was to give plaintiffs the whole — of the suit, so far as they had been paid, whether incurred in the three Courts in which they were directed to be taxed or in the Court of first instance. (P. C.) 3 P. C. R. 405 (L. R. 4 I. A. 137; I. L. R. 3 Cal. 161).

2. A special appeal will not lie against any order as to — which it was within the discretion of a Court to make; though the High Court can, in regular appeal, review the exercise of the discretion of the Lower Court in the award of —. 25 W. R. 226 (I. L. R. 1 Cal. 385).

3. — of collection. *See* Trespasser 1.

COSTS (*continued*).

4. An action brought to recover — of proceedings held under Act XX of 1864 is not maintainable when the Court, before which such proceedings were taken, has made no order as to the payment of such —. I. L. R. 2 Bom. 360.

5. Where, in a suit for pre-emption, it was found by the Court that the actual price of the property was less than the price stated in the deed of sale, and the Court gave the plaintiff a decree with —: *Held* that the amount payable by the defendant in respect of the fees of the plaintiff's pleader ought to be calculated, not on a valuation of the property which was found to be false, or on the amount on which the Court fee on the plaint was paid, but on the real value of the property as found by the Court. I. L. R. 1 All. 709.

6. A mortgagee is, as a general rule, entitled to the costs of enforcing his security; but where the Court, in consideration of his usurious bargain, declines to award them wholly or in part, the High Court will not interfere. I. L. R. 3 Bom. 202.

7. Where the defendant proved a set-off against the plaintiff, and thus reduced the amount which he (plaintiff) was entitled to recover from the defendant for breach of contract: *Held* that, notwithstanding the provisions of Act XXVI of 1864 s. 9, the plaintiff was entitled to his —. (O. J.) I. L. R. 4 Bom. 407.

See **Arrest 2.**
Attachment 21.
Attorney and Client 1, 5, 8.
Auction-Purchaser (Execution Sale) 2.
Bond 4.
Champerty 4.
Cross Decree 1.
Damages 8.
Divorce 12, 13.
Execution of Decree 23.
Guardian and Minor 8.
Indemnity 1.
Interest 5.
Khas Mehal 1.
Letters of Administration 1.
Libel 5.
Limitation (Act IX of 1871) 25, 28, 42, 105.
" (Act XV of 1877) 33, 49.
Mortgage 88, 112, 125.
Practice (Appeal) 15.
" (Review) 21.
" (Suit) 23.
Principal and Surety 12.
Privy Council 5, 9, 11, 15, 21, 36, 41, 45.
Purdah Woman 8.
Religious or Charitable Trusts 1.
Residence 3.
Sale (in Execution of Decree) 54.
Tender 1, 2.
Witness 9.

Cotton Frauds (Bombay).

1. The possession of adulterated cotton, even though accompanied by a knowledge that the cotton is adulterated, is not sufficient to sustain a conviction of fraudulent adulteration or deterioration of cotton under Act IX of 1863 (Bombay). No criminality attaches to such possession until the cotton is actually offered for sale or compression. (Cr.) I. L. R. 1 Bom. 228.

2. Cotton supposed to have been adulterated in foreign territory was seized in British territory: *Held* that the Magistrate of the place where the cotton was seized has jurisdiction to try the offender, as the effect of Act VII of 1878 (Bombay) ss. 6 and 14 is to make the possession of "cotton liable to confiscation" punishable with fine, and it is immaterial where the adulteration takes place. (Cr.) I. L. R. 3 Bom. 384.

Counsel.

See **Advocate.**
Attorney and Client 7.
Barrister.
High Court 17.
Insolvency 11.

Court Fees.

1. Act VII of 1870 s. 12 prohibits appeals on questions relating to valuation for the purpose of determining the amount of a fee, but does not prevent a Court of Appeal from determining whether or not consequential relief is sought in a suit, so that it may determine under what class of cases the suit falls for the purpose of the — Act. A suit by a person against whom an order has been made, under Act VIII of 1859 s. 246, disallowing his claim to the attached property, for a decree declaring his right to the property, need not be valued according to the value of the property, but can be brought on a stamp of Rs. 10 under Act VII of 1870 sch. 2 art. 17 (iii). I. L. R. 1 All. 360; *Ib.* 2 All. 63. *But see* I. L. R. 1 Mad. 40. *See* 3 *post.*

2. There is no appeal against the order of a District Judge fixing the amount of fee chargeable on a plaint. The right of appeal to which the plaintiff might have been entitled under Act VIII of 1859 ss. 31 to 36 has been taken away by Act VII of 1870 s. 12 cl. 1. I. L. R. 2 Bom. 145, 219. *See* 5 *post.*

3. A suit praying merely for a declaration that the plaintiff is entitled to require the defendants to account to him, and to permit him to inspect their books, is simply a suit for a declaratory decree without consequential relief, and falls within Act VII of 1870 sch. 2 art. 17 (iii). I. L. R. 2 Bom. 219. *See* 1 *ante.*

4. A suit praying for such a declaration as the above, and also either for a positive order in the nature of a mandatory injunction for the production of the defendant's books and property in their hands, or for a positive decree for an account to be taken by the Court, and for the production of the books and property, would range under s. 7 cl. 4 (*c*) (*d*) and (*f*). *Quære* whether, in the above cases, the plaint would, by virtue of s. 17, require separate stamps under each article, and whether the prayer for an injunction or order for the production of books is not merely ancillary to the taking of an account. *Ib.*

5. *Quære* whether the provision in s. 7 cl. 4 about computing the fee "according to the amount at which the relief sought is valued in the plaint," is inconsistent with and supersedes Act VIII of 1859 s. 31; and whether the concluding passage in cl. 4 empowers the Judge to revise and enhance the valuation under that clause. *Ib. See* 2 *ante.*

6. The fee payable under s. 7 cl. 4 is according to the amount at which the relief sought is valued in the plaint, and not the value of the subject-matter of the claim. *Ib.*

7. *Quære* whether the First Class Subordinate Judge has jurisdiction to try a suit for an account where the plaint states that the property in the hands of the defendants, in respect of which the account is prayed, exceeds Rs. 5,000, but values the claim at Rs. 100. *Ib.*

8. The words "distinct subjects" in Act VII of 1870 s. 17 mean distinct causes of action or distinct kinds of relief. (F. B.) I. L. R. 1 All. 552. *More distinctly laid down in* (F. B.) I. L. R. 2 All. 676.

The above ruling how applied in a suit against brothers and a nephew for a share of a deceased uncle's moveable and immoveable property according to the Hindoo law of inheritance and under a will, by the cancelment of a deed of gift of the immoveable property in favor of the nephew. (F. B.) I. L. R. 2 All. 676.

Where plaintiffs sued in virtue of a conditional sale which had been foreclosed for (1) possession of a house, (2) compensation, in the nature of rent, for its use and occupation from the date of foreclosure to date of suit, and (3) like compensation from latter date to date on which possession of the house should be delivered to them, the defendants having purchased the house subsequently to the conditional sale, but before foreclosure: *Held* that, as the suit embraced "distinct subjects" within the meaning of

Court Fees (*continued*).

s. 17, the plaint and memorandum of appeal were chargeable with the aggregate amount of fees to which the plaints or memoranda of appeal in separate suits for the different claims would have been liable. (F. B.) I. L. R. 2 All. 682.

9. A testator died in England, and his executrix proved his will there, and then in this Court, paying duty in each country on the assets there. On the death of the executrix the Administrator-General obtained letters of administration *de bonis non* of the testator's unadministered property, valued at a greater sum than the sum on which duty was originally paid in this country by the executrix, but which sum was made up of assets from England upon which duty had already been paid there: *Held* that as the assets were within the jurisdiction of this Court at the time of the grant of administration, and the Administrator-General could not have obtained possession of them otherwise than by virtue of the grant, they were liable to the *ad valorem* fee prescribed by Act VII of 1870 sch. 1 art. 11. (O. J.) I. L. R. 4 Cal. 725.

10. When a plaint or memorandum of appeal comprises a number of claims, and a portion only of such claims has been allowed by the judgment, the party seeking a review should be required to stamp his application with a fee sufficient to cover the amount of the claims in regard to which he wishes the Court to review its judgment, with reference to Act VII of 1870 sch. 1 arts 4 and 5. I. L. R. 4 Bom. 26.

11. If a document which ought to bear a stamp under the Act, has been used in the High Court, and the mistake or inadvertence which permitted its reception in a Lower Court without being properly stamped, comes to light in the High Court, any Judge of that Court may, under s. 28, direct that it should be properly stamped. (F. B.) I. L. R. 2 All. 682.

12. In a suit, under Act X of 1877 s. 283, for a declaration of her proprietary right to certain immoveable property attached in the execution of a decree, the plaintiff asked that the property might be "protected from sale:" *Held* that consequential relief was claimed in the suit, and — were therefore leviable under Act VII of 1870 s. 7 cl. 4 (*c*) and not under sch. 2 art. 17 (iii). (F. B.) I. L. R. 2 All. 720.

13. Suits brought to set aside or to restore an attachment upon a house, in pursuance of the permission given in Act VIII of 1859 s. 246, may be regarded either as "suits to obtain a declaratory decree or order where consequential relief is prayed," so as to fall within Act VII of 1870 s. 7 cl. 4 (*c*), or as suits to obtain or set aside a summary decision or order, in which case the stamp duty payable would be that prescribed by Act VII of 1870 sch. 2 art. 17 cl. 1. Act VII of 1870 being a fiscal enactment, it is the duty of the Courts to treat such suits as belonging to the latter class (it being the more favorable to the suitor), and to impose fees accordingly. (F. B.) I. L. R. 4 Bom. 515.

14. Decisions under Act VIII of 1859 s. 246, as to the removal or retention of attachments, are "summary decisions or orders" within the meaning of Act VII of 1870 sch. 2 art. 17 cl. 1. The words "summary decision or order" in this clause of Act VII of 1870, mean decision or order not made in a regular suit or appeal. (F. B.) *Ib.*

15. The construction which has been given to these words, or nearly similar words, in the Limitation Acts (*e.g.*, Act IX of 1871 sch. 2 art. 15, and Act XV of 1877 sch. 2 art. 13), affords no guide to their construction in Act VII of 1870. (F. B.) *Ib.*

16. A stamp of Rs. 10 is sufficient for the plaint or memorandum of appeal in a suit brought, under Act VIII of 1859 s. 246, to restore an attachment upon a house which has been removed at the instance of an intervenient under that section. (F. B.) *Ib.*

17. A person whose property was attached, was not compelled to resort, in the first instance, to an application under Act VIII of 1859 s. 246. There was nothing to prevent him from commencing his litigation by a regular suit, if such were his pleasure. Act VII of 1870 s. 7 cl. 8 would apply to such a suit. (F. B.) *Ib.*

18. The plaintiff had attached certain immoveable property in execution of a decree against a third party. The attachment was removed on application by the defendant, under Act VIII of 1859 s. 246, whereupon the plaintiff sued for a declaration that the property in dispute belonged to his judgment-debtor, and was liable to be attached and sold under his decree. The plaint, which did not state any amount as the value of the claim, bore a Rs. 10 stamp. The suit was dismissed on the ground that the plaint ought to have been stamped according to the value of the plaintiff's claim: *Held* by the High Court on appeal that the plaint was properly stamped, under Act VII of 1870 sch. 2 art. 17 cl. 1, as the suit was a suit to set aside a summary decision of a Civil Court not established by Letters Patent. I. L. R. 4 Bom. 535.

19. In a suit for a declaration of proprietary right in respect of a house in which the removal of an attachment of such house in the execution of a decree was sought, the plaintiff did not, as Act VII of 1870 s. 7 directs, state in his plaint the amount at which he valued the relief sought, nor did the Court of first instance cause him to supply this defect. On appeal by the plaintiff from the decree of the Court of first instance dismissing his suit, the Lower Appellate Court demanded from the plaintiff — in respect of his plaint and memorandum of appeal computed on the market-value of such house, the plaintiff having only paid in respect of those documents respectively the — payable in a suit for a declaration of right where no consequential relief is prayed: *Held* that the market-value of the property could not be taken by the Lower Appellate Court to be the value of the relief sought, as the plaintiff did not seek possession of the property; and that as the valuation of the relief sought rested with the plaintiff and not the Court, and as in this instance the declaration of right claimed necessarily carried with it the consequential relief sought, of which the value was merely nominal, further — could not be demanded by the Lower Appellate Court from the plaintiff. I. L. R. 2 All. 869.

See Attachment 10.
Costs 5.
Declaratory Decree 16.
Pauper Suit or Appeal 2, 4, 5, 7.
Will 29, 30, 40, 41.

Court of Wards.

1. On a consideration of Regs. X of 1793 and LII of 1803, it was held that the mere fact that the — has charge of the estates of a female did not necessarily disqualify her from contracting debts. (P. C.) 2 P. C. R. 107 (9 W. R. P. C. 9; 11 Moo. 468).

2. Act XXXV of 1858 s. 9 and Act XIX of 1873 s. 195 do not render it imperative on the — to take charge of the estate of a person adjudged by a Civil Court, under the former Act, to be of unsound mind; but merely confer on the — a power so to do. Until the — exercises that power, the appointment by the Civil Court of a manager of the lunatic's property under Act XXXV of 1858 s. 9 is valid. I. L. R. 1 All. 476.

See Hindoo Law (Adoption) 12.

Cousin.

See Maternal Cousin.
Paternal Cousin.

Covenant.

1. Covenants for title. *See* Damages 4.
2. Covenant running with land. *See* Husband and Wife 16.
3. Covenant not to assign or underlet lease. *See* Ferry 3. Nor to grant Zur-i-peshgee. *See* Mortgage 127.
4. Covenant not to alienate. *See* Mortgage 64, 118.
5. Covenant for repayment of loan. *See* Registration 53.
6. Covenant to repair. *See* Limitation (Act XV of 1877) 33.
7. Covenant to indemnify. *See* Attorney and Client 11.

COVENANT (*continued*).

See Principal and Surety 12.
Restraint of Trade 1.
Stamp Duty 4.

Criminal Breach of Trust.

1. Where a complaint of — in respect of property belonging to a Hindoo temple was preferred against the trustee and manager of the temple: *Held* that the ordinary criminal law was not excluded by Reg. VII of 1817 (Madras) or Act XX of 1863. (Cr.) I. L. R. 1 Mad. 55.

See Compounding 3.

Criminal Force.

See High Court 11.

Criminal Proceedings.

1. Under Act X of 1872 s. 471, a Judge has no power to send a case to a Magistrate except when, after having made such preliminary enquiry as may be necessary, he is of opinion that there is sufficient ground (*i.e.* ground of a nature higher than mere surmise or suspicion) for directing judicial enquiry into the matter of a specific charge; and the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge of false evidence into which the Magistrate ought to enquire. In this case the Judge's order was held to be bad, because he had made no preliminary enquiry, and because it was too vague and general in its character. (Cr.) I. L. R. 1 Cal. 450. *But see* 22 *post.*

2. Although Act XXIII of 1861 s. 16 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by Act X of 1872 s. 471, the whole law as to the procedure in cases within the former section is now embodied in the latter section. (Cr.) *Ib.*

3. — are bad unless they are conducted in the manner prescribed by law; and if they are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused. (Cr.) 25 W. R. Cr. 57 (I. L. R. 2 Cal. 23). *See also* I. L. R. 6 Cal. 83, 96.

4. Where the accused was, by a Magistrate of the 1st Class, committed for trial by the Sessions Court on a charge of having given false evidence in a judicial proceeding before the Sessions Judge, there being no Assistant or Joint Sessions Judge: *Held* that the commitment could not be quashed, there being no error in law, and the case must, therefore, be transferred for trial to another Court of Session. In such a case as the above, the better course would be for the Magistrate to try the case himself, and if he is incompetent to pass a sufficient sentence, for the Sessions Judge to refer the case to the High Court for enhancement of sentence. (Cr.) I. L. R. 1 Bom. 311.

5. A Magistrate to whom a case is referred for enhancement of punishment under Act X of 1872 s. 46 may order the committal of the case for trial by the Sessions Court (F. B. Cr.) I. L. R. 1 Mad. 289. *See also* I. L. R. 4 Bom. 240.

6. The sanction referred to in Act X of 1872 ss. 468 and 469, when given by any of the Courts empowered under the Act, cannot be disturbed by a superior Court. When sanction is refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them. (F. B. Cr.) I. L. R. 1 All. 17.

7. The Court, Civil or Criminal, which is of opinion that there is sufficient ground for enquiring into a charge mentioned in Act X of 1872 ss. 467, 468, and 469, may not, except as provided in s. 472, try the accused person itself for the offence charged. (Cr.) I. L. R. 1 All. 129. *But see contra* I. L. R. 1 All. 162.

8. Act X of 1872 s. 471 does not deprive the Court which possesses the power of, trying an offence mentioned in s. 467, 468, or 469, of the power of trying it when committed before itself. (Cr.) I. L. R. 1 All. 193.

9. Act X of 1872 s. 221 authorizes a Magistrate, after a charge has been drawn up, to stop further proceedings, and commit for trial. Although the explanation to s. 220 provides that, if a charge is drawn up, the prisoner must be either convicted or acquitted, it does not require that the conviction or acquittal should be by the Magistrate who drew the charge. (Cr.) I. L. R. 3 Cal. 495.

10. For the purpose of Act X of 1872 s. 468, a Magistrate of the 1st Class is subordinate to the Magistrate of the district; a sanction given by the latter to prosecute a person for intentionally giving false evidence before the former is, therefore, legal and sufficient, notwithstanding the refusal by the former to give such sanction himself. *Semble* that the Sessions Court has not power to give such sanction. (Cr.) I. L. R. 2 Bom. 384. *So held* by F. B. in I. L. R. 2 All. 205.

11. For the purpose of the same section, the Court of the Subordinate Judge is subordinate to that of the District Judge, notwithstanding that the subject-matter of the litigation in the former Court involves more than Rs. 5,000 and an appeal lies direct to the High Court from the decision of that Court in that matter. (Cr.) I. L. R. 2 Bom. 481.

12. A prosecution commences when a complaint is made, the reception of the complaint being a stage of the judicial proceedings towards conviction. (Cr.) *Ib.*

13. Where the Magistrate of a division held an enquiry, under Act X of 1872 s. 135, into the cause of death of a person found dead under suspicious circumstances, and without making a specific charge against any person, drew up a report embodying the result of his enquiry, and sent the report to the Magistrate of the district, and subsequently — were taken against one of the witnesses which resulted in an acquittal: *Held* that there being nothing in the language of s. 135 requiring the Magistrate holding such enquiry either to make a report or to come to a finding, the report actually sent could not be considered as part of a judicial proceeding, and that therefore the High Court had no power to send for it under s. 296. No analogy exists between a Coroner's inquest and an enquiry into the cause of death under s. 135. (Cr.) I. L. R. 3 Cal. 742.

14. When sanction has been given under Act X of 1872 s. 468 by a Deputy Magistrate to a person to prosecute another for bringing a false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under s. 142 without complaint. (Cr.) I. L. R. 4 Cal. 712.

15. A Deputy Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss. 182 and 211 Penal Code. Whether such sanction has been rightly or wrongly given, is a question for the accused to raise before a competent Court. (Cr.) I. L. R. 4 Cal. 869.

16. The charge having been read to the accused, he stated his defence to the same, upon which the Magistrate, the witnesses for the prosecution being in attendance, called upon the accused to cross-examine them. The accused refused to do so until he had examined the witnesses for the defence who were not in attendance. The Magistrate then discharged the witnesses for the prosecution and adjourned the trial for the production of the witnesses for the defence: *Held* that the accused was not entitled to have the witnesses for the prosecution summoned, in order that they might be cross-examined by him, on the date fixed for the examination of the witnesses for the defence; and that the Magistrate was empowered to record both oral and documentary evidence after the witnesses for the defence had been examined. (Cr.) I. L. R. 2 All. 253.

17. An offence under s. 211 of the Penal Code includes an offence under s. 182; it is, therefore, open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211. (Cr.) I. L. R. 5 Cal. 184.

18. *Held* that a Court of Revenue is a Civil Court within the meaning of Act X of 1872 ss. 468 and 469; that the declining by a Court of Revenue to sanction a prosecution under those sections, under a mistaken view of the law and under the impression that sanction was unnecessary, did not constitute sanction; and that, under the words "at any time" in s. 470, sanction to prosecute cannot be given after the trial and conviction of the accused person. (F. B. Cr.) I. L. R. 2 All. 533.

19. *Held* by the Judge making the reference, on the

CRIMINAL PROCEEDINGS (*continued*).

case being returned to him, that the accused persons having been prosecuted without the sanction required by ss. 468 and 469, all the proceedings were invalid and must be quashed, and the accused retried, sanction to their prosecution having been obtained. (Cr.) *Ib.*

20. A person who makes a false statement upon oath before a Police patel acting under Act VIII of 1867 (Bombay) s. 13, gives false evidence within the meaning of Act XLV of 1860 s. 191 and is punishable under s. 193; but his trial for that offence requires no sanction, a Police patel not being a Criminal Court within the definition of Act X of 1872 s. 4 (*see* s. 468), although offences under Chap. X of the same Act committed before the same officer cannot be tried without a sanction (*see* s. 467). (Cr.) I. L. R. 4 Bom. 479.

21. With the exception of the Advocate-General, Standing Counsel, Government Solicitor, or other officer generally or specially empowered by the Local Government in that behalf, no person, whether counsel or attorney, can claim the right to conduct the prosecution of any criminal case without the permission of the Presidency Magistrate. (Cr.) I. L. R. 6 Cal. 59.

22. If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice, he is justified in directing — against such person under Act X of 1872 s. 471 without any further enquiry than that which he has already held in his own Court. As a matter of discretion and propriety, it is right for a Court, before committing a person on a charge of perjury upon his own uncontradicted statement, to await the hearing of the appeal, where an appeal is pending, in the case in which he is charged with such perjury. (Cr.) I. L. R. 6 Cal. 308. *But see* 1 *ante.*

See Compensation 1.
Compounding 1.
Contempt of Lawful Authority of Public Servant 2.
High Court 16.
Marriage 12.
Public Servant 7, 8.

Criminal Trespass.

1. The unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can be brought within the definition of — in the Penal Code. (Cr.) I. L. R. 2 Cal. 354.

2. A person plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit — within the meaning of that term in s. 441 Penal Code. (Cr.) I. L. R. 1 All. 527.

3. Where the accused persons, execution-creditors, in company with an authorized bailiff, broke open complainant's door before sunrise with intent to distrain his property for which they were convicted on a charge of lurking house trespass by night or housebreaking by night: *Held* that, as they were not guilty of the offence of —, there being no finding of any such intent as is required to constitute that offence, and as — is an essential ingredient of either of the offences with which they were charged, the conviction must be quashed. (Cr.) I. L. R. 2 Mad. 30.

4. If a person enters on land in the possession of another in the exercise of a *bonâ fide* claim of right, and without any intention to intimidate, insult, or annoy such other person, or to commit any offence, then, although he may have no right to the land, he cannot be convicted of —. (Cr.) I. L. R. 2 All. 101. *See also* I. L. R. 2 All. 465.

5. The mere assertion, however, in such cases as the above, of a claim of right, is not in itself a sufficient answer to charges of — and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender; and if it arrives at the conclusion that he was not acting in the exercise of a *bonâ fide* claim of right, it cannot refuse to convict the offender, assuming that the other facts are established which constitute the offence. (Cr.) *Ib.*

6. Where a person committed a trespass with the intention of committing mischief, thereby committing —, and at the same time committed mischief: *Held* that such person could not, under Act X of 1872 s. 454 cl. 3 receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established. (Cr.) I. L. R. 2 All. 101.

7. A, who had been warned off the lands of B, having subsequently shot a deer near the boundary of B's land, and the deer having run on to B's land, followed it on to such land for the purpose of killing it: *Held* that his doing so was not a —. (Cr.) I. L. R. 4 Cal. 837.

8. Re-entry into or remaining upon land from which a person has been ejected by civil process, or of which possession has been given to another, for the purpose of asserting rights he may have solely or jointly with other persons, is not — unless the intent to commit an offence or to intimidate, insult, or annoy is conclusively proved. (Cr.) I. L. R. 2 All. 465.

Crops.

See Bhag Jote 1.
Distraint 2.
Ejectment 5.
Embankment 1.
Emblements.
Limitation (Act IX of 1871) 78, 79.
Mortgage 79.
Sale (in Execution of Decree) 85.
Small Cause Court 22.

Cross Decree.

1. S and two other persons held a decree for costs against M which did not specify the separate interests of each in the decree, and M held a decree for money against S alone which he wished to treat as a — under Act X of 1877 s. 246: *Held* that the decree held by S and the other persons was not a decree between the same parties as the parties to the decree held by M, and that his decree could not therefore be treated as a — under that section. I. L. R. 2 All. 91.

2. In April 1877 M sued S for money, and on 10th May 1877 S sued M for money, both suits being instituted in the same Court. In the meantime, on 9th May 1877, B applied for the attachment of the money claimed by M in his suit, and obtained an order prohibiting M from receiving, and S from paying, any sum which might be found in that suit to be due by S to M. On 23rd June 1877 M obtained a decree in his suit against S, and S obtained a decree in his suit against M, S's decree being for the larger sum. On the same day, under Act VIII of 1859 s. 209, satisfaction for the smaller sum was entered on both decrees, and execution taken out of S's decree for so much as remained due. At the same time S objected to B's attachment, but his objection was disallowed: *Held* in a suit by S against B to have the order disallowing his objection set aside and the propriety and legality of the set-off above mentioned established, regard being had to Act VIII of 1859 s. 209, that the attaching order of 9th May could have no operation or effect, and that, even if B had followed up that order and attached M's decree against S, that step would not have put him in a better position, for the same section being followed, and the decrees being essentially cross-decrees, that for the smaller sum became absorbed in the one for the larger, and attachment could not affect it. I. L. R. 2 All. 866.

Cross-Examination.

See Accused 1.
Criminal Proceedings 16.
Master and Servant 2.
Practice (Criminal Trials) 8.
" (Suit) 7.
Recognizance 2.
Witness 2, 7.

Cruelty.

See Conjugal Rights 1, 2, 6.
Husband and Wife 7.

Culpable Homicide not amounting to Murder.

1. A snake-charmer exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators; the spectator tried to push off the snake, was bitten, and died in consequence: *Held* that the snake-charmer was guilty of — under s. 304 Penal Code, and not merely of causing death by negligence, an offence punishable under s. 304*a*. (Cr.) I. L. R. 5 Cal. 351.

1. Where death results in a fight between two bodies of men, deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is—. (Cr.) I. L. R. 6 Cal. 154.

See Causing Death by Rash or Negligent Act.
Murder 2, 3, 4, 5.

Cumulative Sentences.

1. In a case of conviction of housebreaking by night under s. 457, and theft under s. 380 Penal Code, there may either be one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which would be given for the graver offence. (Cr.) I. L. R. 1 Bom. 214. *See also* I. L. R. 2 All. 644.

2. The aggregate of the sentences passed under Act X of 1872 s. 314, in the case of simultaneous convictions for several offences, must be considered a single sentence for the purpose of confirmation or appeal. (Cr.) I. L. R. 1 Bom. 223.

3. Where the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender: *Held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 Penal Code, and of voluntarily assisting in concealing stolen property under s. 414. (Cr.) I. L. R. 1 All. 379.

See Child 1.
Criminal Trespass 6.
Rioting 1.

Curator.

See Guardian and Minor 35.

Currency Note.

See Stolen Property 1.

Custom.

1. The duty of an European Judge in administering Hindoo law is not so much to enquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal and has there been sanctioned by usage. (P. C.) 2 P. C. R. 135 (10 W. R. P. C. 17; 12 Moo. 397; 1 B. L. R. P. C. 1).

2. Under the Hindoo system of law, clear proof of usage will outweigh the written text of the law. (P. C.) *Ib.* *See also* 23 W. R. 131.

But the custom must be shown to have existed from time immemorial. 16 W. R. 179.

The usages of the Gentoos how far recognised by the Courts in India. (O. J.) I. L. R. 4 Bom. 545.

3. The prevalence in any part of India of a special course of descent in a family differing from the ordinary course of descent in that place, stands on the footing of usage or — of the family, capable of attaching and of being destroyed equally whether the property be ancestral or self-acquired. (P. C.) 2 P. C. R. 147 (10 W. R. P. C. 35; 12 Moo. 81; 1 B. L. R. P. C. 26).

4. Where a — is proved to exist, it supersedes the general law, but the general law still regulates all beyond the custom. (P. C.) 2 P. C. R. 243 (12 W. R. P. C. 21; 12 Moo. 523; 3 B. L. R. P. C. 13).

5. If it is contended that the succession to property is regulated by any special family —, that — ought to be alleged and proved with distinctness and certainty. (P.C.) 2 P. C. R. 418 (15 W. R. P. C. 47). *See also* (P. C.) 2 P. C. R. 603 (17 W. R. 553; 14 Moo. 570; L. R. I. A. Sup. 1), 3 P. C. R. 529 (L. R. 5 I. A. 87; I. L. R. 1 All. 688).

6. A settlement of an estate made at the time of the Perpetual Settlement will not *per se* destroy a family usage regulating the manner of descent, either in the case of a well established *raj*, or even where the origin could not be shown. A manner of usage of descent may be discontinued. It is of the essence of family usage that it should be certain, invariable, and continuous. (P. C.) 2 P. C. R. 744 (19 W. R. 8; I. L. R. 1 Cal. 186).

7. A — is a rule which, in a particular family or in a particular district, has, from long usage, obtained the force of law. It must be ancient, certain, and reasonable, and being in derogation of the general rules of law, must be construed strictly. (P. C.) 3 P. C. R. 304 (26 W. R. 55; L. R. 3 I. A. 259). *See also* I. L. R. 2 All. 49.

8. Of Jains. *See* Hindoo Law (Adoption) 17; *and post* 13.

9. *Held* that the decision in a former suit that the plaintiff as mother was the heiress of her son and was (as such heiress) entitled to possession, was conclusive against the title of the present plaintiff, who was a party to (defendant in) that suit; and that she having taken possession under that decree, the plaintiff was barred by the adjudication from recovering the possession from her upon the ground that (according to the Mitacshara law, and a family — or *kolachar*, excluding females from inheritance) she was not the heiress, and that he, as the eldest branch of the family, was entitled to succeed to the property upon the death of her son. (P. C.) 3 P. C. R. 540 (L. R. 5 I. A. 149; I. L. R. 4 Cal. 190).

10. Even if the family — set up by the plaintiff in the present suit had not been set up by him, as defendant, in the former suit, the adjudication in the first suit would still be a bar to the proceedings in the second, on the ground that the claim was the same in both suits, although the allegations were different, and that the plaintiff, as defendant in possession, ought to have resisted the claim in the former suit by setting up the family —. (P. C.) *Ib.*

11. But although the plaintiff is barred by the former adjudication from setting up the family — for the purpose of showing that he is entitled to possession during the defendant's life, he is not thereby barred from showing that, upon her death, he, if he survives, will be entitled to succeed her. (P. C.) *Ib.*

12. Unless the plaintiff could establish the family — which he had set up, he was held not entitled to ask for a declaration that a deed of sale executed by the defendant in favor of another party was illegal and inoperative after her death. (P. C.) *Ib.*

13. The customs of the Jains, where they are relied upon, must be proved by evidence as other special customs and usages varying the general law should be proved; and when so proved, effect should be given to them. In the absence of proof, the ordinary law must prevail. (P. C.) 3 P. C. R. 572 (L. R. 6 I. A. 15; I. L. R. 4 Cal. 744). *See* 8 *ante*.

14. Usage of Shroffs. *See Hoondee* 2.

15. Usage of Trade. *See* Attorney and Client 9; Res Judicata 9.

16. Immoral —. *See* Naikins 3; Prostitution 2.

17. Plaintiffs, zemindars, sued for a declaration of their ancient right, as against all the tenants of a certain village, to appropriate all trees of spontaneous growth and the fruits of other trees planted by the tenants; also to receive

Custom (*continued*).

as manorial tribute a certain number of ploughs annually, and a certain offering of poppy-seed and other farm produce on the occasion of the marriage of persons of the lower caste of tenants, with a further right to buy a certain proportion of the produce of the sugar-cane manufactories and fields in the village. The Lower Courts having decreed the suit on vague and general parol evidence as to the existence of the said customs: *Held* (1) that where a — regarding several cesses is alleged, the existence of the — regarding each cess should be tried as a separate issue; (2) that parol evidence as to the existence of such — should be tested by ascertaining the grounds of the witness's opinion; (3) that the best proof of — is instances in which it has been acted on, and documentary evidence that it has been enforced; (4) that a — to be good must be definite. I. L. R. 1 Cal. 440.

18. A cess leviable in accordance with village —, which is not recorded under the general or special sanction of the Local Government, cannot, under Act XIX of 1873 s. 66, be enforced in a Civil Court. I. L. R. 2 All. 49. *See* I. L. R. 1 All. 373.

19. The fact that such a cess has been recorded by a Settlement Officer is important evidence of the —, but not conclusive proof of it. *Held*, on the evidence in this case, that the village — set up was not established. *Ib.*

20. Of Naikins. *See* Naikins 3.

See Cazee 8.
Churs 5, 9, 18.
Co-Sharers 5.
Desai 4.
Divorce 3.
Documents 5.
Endowment 2, 8, 12, 24, 28.
Enhancement 25, 29.
Evidence 8.
Guarantee 1.
Hindoo Law (Adoption) 27, 41.
,, (Coparcenary) 3.
,, (Inheritance and Succession), 4, 6, 12, 17, 29, 30.
Illegitimate 4.
Insolvency 4.
Joint Family 1.
Julkur 5.
Landlord and Tenant 2.
Limitation 42.
,, (Act XV of 1877) 9.
Lumbardar 8.
Mahomedan Law 5, 11, 12.
Meerasee 7.
Mortgage 18.
Pachete 1.
Pre-emption 7, 17.
Raj 1, 3.
Right of Occupancy 6.
Small Cause Court 7.
Zemindaree 1, 2, 5.

Customs.

1. Collector of sea —. *See* Jurisdiction 19.
2. — Officers. *See* Jurisdiction 21.
3. Transshipment Permit. *See* Transshipment 1.

Cyprus.

See Jurisdiction 44.

Dacoity.

See Jurisdiction 18.

Damages.

1. Each and every person co-operating in a plunder is liable for —. Evidence in such a case. (P. C.) 2 P. C. R. 268 (12 W. R., P. C., 38; 2 B. L. R., P. C., 44).

2. Measure of —. *See* Attachment 15; Bailment 4; Contract 11; Negligence 1; Patent 1; Shipping 2; Small Cause Court 33; Timber 1.

3. No action is maintainable for — occasioned by a Civil action, even though brought maliciously and without reasonable and probable cause; nor will it lie to recover costs awarded by a Civil Court. I. L. R. 1 Bom. 475. *But see* 3 P. C. R. 361 (L. R. 4 I. A. 23; I. L. R. 2 Cal. 233).

4. A suit for — was held not to lie for breach of covenants for title contained in a voluntary deed of gift, which, moreover, being unregistered, was not admissible in evidence under the Registration Act III of 1877. (O. J.) I. L. R. 2 Bom. 273.

See Arbitration 23.
Arrest 2.
Bailment 4, 5.
Contract 2, 10.
Defamation 1.
Embankment 1.
Excise 1.
Guardian and Minor 8.
Hereditary Office 7.
Hindoo Law (Religious Ceremonies) 1, 3.
Husband and Wife 7.
Indigo 2.
Insurance 7.
Interest 4*a*, 17.
Joinder of Parties 4.
Julkur 5.
Jurisdiction 25, 35.
Libel 6.
Limitation (Act IX of 1871) 51.
,, (Act XV of 1877) 83.
Malicious Prosecution 2.
Mortgage 19, 30.
Municipal 14, 17.
Obstruction 1, 2, 3, 4.
Partnership 15.
Public Thoroughfare 1.
Railway 6, 7, 8.
Restraint of Trade 1.
Right to Light and Air 3.
Right to Water 1.
Sale 11.
,, (for Arrears of Revenue) 4.
,, (in Execution of Decree) 8.
Set-off 1, 2.
Shipping 1.
Slander 1.
Tank 1.
Timber 1, 2.

Dancing Girls.

See Endowment 30.
Naikins.
Prostitution 2.

Dattaka Mimansa.

See Hindoo Law (Adoption) 82.

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Daughter.

1. Posthumous daughter. *See* Succession 3.

See Compromise 3.
Daughter-in-law.
Daughter's Son.
Father's Brother's Daughter's Son.
Gift 9, 16.
Guardian and Minor 18.
Half-sister's Daughter.
Hindoo Law (Adoption) 19,
,, (Inheritance and Succession) 18, 21, 24, 28, 30, 40, 49.
Hindoo Widow 29.
Legitimacy 4.
Mahomedan Law 13.
Naikins 2.
Res Judicata 13.
Sister's Daughter's Son.
Will 61, 62, 64, 65.

Daughter-in-law.

See Hindoo Law (Inheritance and Succession) 48.
Son's Widow.

Daughter's Son.

See Hindoo Law (Adoption) 41.
,, (Inheritance and Succession) 18, 20.
Oudh Estates 10.

Dayabhaga.

See Hindoo Law (Coparcenary) 21, 27.
,, (Inheritance and Succession) 23.
Hindoo Widow 22.
Illegitimate 8.

Deaf and Dumb.

See Estoppel 17.

Death.

1. The reversioners next after J to the estate of S deceased sued to avoid an alienation of S's estate, affecting their reversionary right, made by his widow. J had not been heard of for 8 or 9 years, and there was no proof of his being alive: *Held* that his — may be presumed under the provisions of Act I of 1872 s. 108 for the purpose of the suit, although, in a suit for the purpose of administering the estate, the Court might have to apply the Hindoo law of succession prescribed when a person is missing or dead. (F. B.) I. L. R. 1 All. 53. *See* I. L. R. 2 All. 625.

See Attorney and Client 9.
Capital Punishment.
Causing Death by Rash or Negligent Act.
Child 1.
Criminal Proceedings 13.
Grievous Hurt 1.
Hindoo Law (Inheritance and Succession) 38.
,, Widow 54.
Hurt 1.
Information 2.
Lease 11.
Limitation (Act XV of 1877) 5, 55.
Mahomedan Law 13.
Murder 8.
Special Appeal 7.

Debtor and Creditor.

1. Where there is a large debt (*e.g.* dower), and delivery and transfer of something equivalent to what the debtor ought to have provided, the presumption is that such thing was given in payment or satisfaction, and not as an additional gift, leaving the original debt unsettled. (P. C.) 2 P. C. R. 420 (7 B. L. R. 643).

2. The creditors of a deceased Mahomedan cannot follow his estate into the hands of a *bonâ fide* purchaser for value, to whom it has been alienated by the heir-at-law, whether the alienation has been by absolute sale or by mortgage. But where the alienation is made during the pendency of a suit in which the creditor obtains a decree for the payment of his debt out of the assets of the estate which have come into the hands of the heir-at-law, the alienee will be held to take with notice, and be affected by the doctrine of *lis pendens*. (P. C.) L. R. 5 I. A. 211 (I. L. R. 4 Cal. 402).

3. Barred debt. *See* Administrator-General 2; Limitation (Act IX of 1871) 30; Small Cause Court 15; Succession 5.

4. Personal debt. *See* Auction-Purchaser (Execution-Sale) 1; Hindoo Widow 16, 28.

5. The law relating to voluntary alienations by debtors explained. I. L. R. 2 All. 891.

See Arbitration 19.
Attached Property 3.
Attachment 17, 18, 19.
Co-Sharers 2.
Court of Wards 1.
Deccan Agriculturists Relief 5.
Gift 13, 14, 15, 17.
Guardian and Minor 2.
Hindoo Law (Coparcenary) 12.
Imprisonment 1, 4.
Indigo 1.
Insolvency.
Instalments 5.
Interest 2, 8.
Libel 6.
Lien 4.
Limitation (Act IX of 1871) 21, 68, 81.
,, (Act XV of 1877) 37, 88.
Mahomedan Law 5.
Manager 2.
Misrepresentation 1.
Mortgage 1, 7, 63.
Principal and Surety 3, 4, 7.
Res Judicata 31.
Sale (in Execution of Decree) 12.
Will, 55, 57.

Deccan Agriculturists Relief.

1. The provisions of — Act XVII of 1879 ss. 11 and 12, are applicable only to suits instituted upon and after 1st November 1879. I. L. R. 4 Bom. 358.

2. The effect of the extension of the — Act XVII of 1879 s. 11, by s. 1 of it, to all India, is simply to impose upon any person in any part of India who brings a suit, of the nature mentioned in s. 3, against an agriculturist or agriculturists residing within the districts of Poona, Satara, Sholapore, and Ahmednuggur, the necessity of instituting such suit, and having it tried, in a Court within the local limits of whose jurisdiction he or they reside. The Court must necessarily be in some one of the said four districts. I. L. R. 4 Bom. 360.

3. The word "agriculturist," as defined in s. 2 cl. 2, refers to an agriculturist residing within any one of the said four districts only, and not to one residing in any other district. *Ib.*

4. On 25th February 1879, a suit was filed for Rs. 85 in the Small Cause Court at Nadiad in the district of Ahmedabad, against two defendants, one of whom was an agri-

DECCAN AGRICULTURISTS RELIEF (*continued*).

culturist residing within the local limits of the Subordinate Judge's Court at Umreth, and not within those of the Small Cause Court at Nadiad. The Judge was of opinion that he had no jurisdiction to try it under the — Act, and referred the case for the opinion of the High Court: *Held* that the Act did not affect the jurisdiction of the Small Cause Court in the case of a defendant who was an agriculturist and resided in a place in the district of Ahmedabad, and not in any one of the four districts mentioned in the Act. *Ib.*

5. Neither s. 21 nor s. 22 of the — Act applies to a decree made previously to 1st November 1879, the day on which the Act came into force; and the holder of such a decree may arrest or imprison his agriculturist judgment-debtor, as well as attach and sell his immoveable property not specifically mortgaged. I. L. R. 4 Bom. 363.

6. The — Act XVII of 1879 is not limited in its application to suits for sums not exceeding Rs. 500. (O. J.) I. L. R. 4 Bom. 624.

7. The effect of the reference in the — Act s. 11, to s. 2 cl. (*w*) is to make all suits of the kinds therein described when brought against an agriculturist cognizable by the local Courts and by them only. (O. J.) *Ib.*

8. S. 11 extends to the whole of British India as to suits brought against agriculturists of the description given in s. 2. (O. J.) *Ib.*

9. In a suit against defendants, who were residents at Sholapore, for Rs. 1,947, the price of goods sold and delivered, the defendants moved for a postponement of the hearing, in order that a commission might issue to take evidence at Sholapore, alleging that by the evidence thus obtained they would be proved to be agriculturists within the meaning of the — Act, and consequently under s. 11 could only be sued at Sholapore. The Court granted the commission, holding that if the defendants established that they were *bonâ fide* agriculturists, they were exempt from the jurisdiction of the High Court. (O. J.) *Ib.*

10. A man must have gained his livelihood by farming, for at least one full agricultural season, to have acquired the condition of an agriculturist under the Act. (O. J.) *Ib.*

Declaratory Decree.

1. A — is not a matter of absolute right, but may be granted or not at the discretion of the Court. (P. C.) 2 P. C. R. 774 (19 W. R. 133; 11 B. L. R. 171; L. R. I. A. Sup. 149).

2. The High Court was held to have exercised a sound discretion in entertaining a suit for a — where a zemindar, in a suit for enhancement, had had his zemindaree right denied. (P. C.) 2 P. C. R. 785 (19 W. R. 171; 11 B. L. R. 203; L. R. I. A. Sup. 165).

3. Where a — is sought without consequential relief in the same suit, the Court must, with reference to Act VIII of 1859 s. 15, see that the declaration of right may be the foundation of relief somewhere. (P. C.) *Ib.* *See also ante* 1 *and post* 6.

4. The right given by Act VIII of 1859 s. 15, of obtaining a declaration of title without consequential relief, can be claimed only in those cases where the Court could have granted relief if relief had been prayed for. (P. C.) 3 P. C. R. 77 (23 W. R. 150; 14 B. L. R. 382; L. R. 2 I. A. 88). *See also* I. L. R. 5 Cal. 512.

5. A suit instituted by a zemindar against his ryots, for the declaration of a mál title, by setting aside, not a deed set up, but an allegation made by defendants of a brommuttur title, was held to be not maintainable, because relief could not be granted in the shape of merely setting aside an assertion which may have been merely by word of mouth. (P. C.) *Ib.*

6. Act VIII of 1859 s. 15 must be construed upon the principles, and by the light of the decisions, of the English Courts of Equity upon the 15 and 16 Vic. c. 86 s. 50, which is in precisely the same words; and the construction which must be put upon it is that a — cannot be made unless there is a right to consequential relief, capable of being had, in the same Court, or in certain cases in some other Court. (P. C.) 3 P. C. R. 106 (23 W. R. 314; 15 B. L. R. 83; L. R. 2 I. A. 169). *See also* 3 P. C. R. 529 (L. R. 5 I. A. 87; I. L. R. 1 All. 688), I. L. R. 1 Mad. 65, I. L. R. 5 Cal. 512; I. L. R. 1 All. 371.

7. The mere quieting of doubtful titles is not sufficient reason for a —; and the Court will not try questions of title as to future interests where neither claimant has a right to present possession, especially questions of title which may never arise. (P. C.) *Ib.* *See* I. L. R. 3 Bom. 34.

8. The question whether a right to some consequential relief exists must arise in all suits in which a declaration of title is sought under Act VIII of 1859 s. 15. (P. C.) 3 P. C. R. 529 (L. R. 5 I. A. 87; I. L. R. 1 All. 688).

9. A right to come to the Court to have a document or act which obstructs the title or enjoyment of property cancelled or set aside, or for an injunction against such obstruction, would be sufficient to sustain a —. (P. C.) *Ib.*

10. In laying down the rule that "a — cannot be made unless there be a right to consequential relief," the Privy Council did not intend to deny to the Courts of this country the power to grant decrees in any case in which, independently of the provisions of Act VIII of 1859 s. 15, they had the power to grant a decree. This power is generally the same as that of the Chancery Court in England. I. L. R. 1 Cal. 456 (25 W. R. 516).

11. Held under the circumstances that a suit for a — would lie; for the plaintiff (the son of one of the widows of a deceased Hindoo), even if his claim to the property were barred by limitation as against the other widow, would yet be entitled to obtain an injunction against any intervention of the latter's adopted son in performing the *shradh* or other ceremonies for the benefit of the deceased, or assuming the *status* of the deceased's adopted son; and moreover the Legislature has in Act VII of 1870 and Act IX of 1871 recognised the right of a person to bring a suit to set aside an adoption as a substantive proceeding independent of any claim to property. I. L. R. 1 Bom. 248.

12. A Subordinate Judge of the 2nd Class has no jurisdiction to entertain a suit for the declaration of the plaintiff's title, where the property in respect of which the declaration is sought exceeds Rs. 5000 in value. I. L. R. 1 Bom. 538.

13. Whether a suit be merely to obtain a — of plaintiff's title to, or whether it be to establish his title coupled with a prayer for possession of, the rights of a deceased person the inheritance is the object in dispute. *Ib.*

14. The provision as to declaratory suits requires great care and circumspection in its application. A — should not be made where the object of the plaintiff is to evade the stamp laws, or to eject under color of a mere declaration of title. The law allows a plaintiff in some cases to rectify a mistake as to stamp duty, but this privilege is subject to qualification, and does not exist where the relief to be granted is altogether distinct from that originally sought; in such cases the plaintiff should not be allowed to put an additional stamp on his plaint. Where a plaintiff sued on a stamp of Rs. 10 for a declaration of his title to land worth Rs. 19,000 in the possession of the defendant: *Held* that the suit could not be maintained. I. L. R. 1 Mad. 40.

Approved and followed in a case where plaintiff sued on a like stamp for a declaration that he was the true spiritual son by adoption of a deceased *gosavi*, his real object being to establish his title to the estate of the deceased. The principle is distinctly involved in Act I of 1877 s. 42. I. L. R. 3 Bom. 230. *But see* I. L. R. 1 All. 360, *Ib.* 2 All. 63.

15. The issuing of proclamations and orders by B to the ryots of an estate to pay rent to him as rightful owner of the estate, application by him to the Collector to be registered as the owner, and other like acts of pretension to the title, and threats, on B's part, are not *per se* sufficient to entitle A, who is in possession and enjoyment of the estate as rightful owner, to a decree declaring him to be the rightful owner. I. L. R. 1 Mad. 65.

16. In a suit merely for a declaration of right in respect of certain property, the Lower Appellate Court, considering that the suit was really one for the possession of such property, allowed plaintiff to make up the full amount of Court fees required for a suit for possession. The plaint in the suit was not amended, and the Lower Appellate Court eventually gave plaintiff a —: *Held*, on second appeal by defendant, who objected that a suit merely for a — could not be maintained, that such objection ought not to be allowed under the circumstances. I. L. R. 2 All. 134.

17. The Court will not, in a declaratory suit, decide

DECLARATORY DECREE (*continued*).

intricate questions of law, where no immediate effect, and possibly no future effect, can be given to its decision, and when the postponement of the decision, to a time when there may be before the Court some person entitled to immediate relief, will not prejudice a plaintiff's right in any way. I. L. R. 5 Cal. 512.

18. The defendant obtained a decree against D, father of the plaintiffs, for satisfaction of his debt by the sale of a moiety of a village mortgaged to him by D. In execution of it he attached the mortgaged property, the attachment being made, under Act X of 1877 s. 274, by an order prohibiting D from transferring or charging the property in any way, and all persons from receiving it from him by purchase, gift, or otherwise. The plaintiffs thereupon applied for the removal of the attachment, but their application was rejected. They then sued for a declaration of their right to two-thirds of the property. The District Judge, who tried the suit, rejected it on the ground that it was barred by Act I of 1877 s. 42, because the plaintiffs might have sought further relief than a mere declaration of title, and omitted to do so. He was of opinion that the attachment constituted a dispossession, and that the plaintiffs might have asked to be replaced in possession, or at any rate, for the removal of the attachment: *Held* by the High Court on appeal that the plaint was not open to objection on the ground that it only asked for a —, without any consequential relief; that the prohibitory order to D did not constitute a dispossession of D, and still less of the plaintiffs, and that they could not have properly asked for removal of the attachment by a cancellation of the prohibitory order to D so long as they admitted that D had an interest in the attached property; and also that the plaintiffs could not have properly asked for any consequential relief in their suit, but that when they instituted it, they were entitled, and, indeed, bound to ask for a declaration of their right, if only to prevent a purchaser at the sale, under the defendant's decree against D, from afterwards alleging that he had purchased without notice of the plaintiff's claim. I. L. R. 4 Bom. 529.

See Auction-Purchaser (Execution-Sale) 2.
Benamee 15.
Cattle-Grazing 1.
Co-Sharers 8.
Court Fees 1, 8, 12, 13, 18, 19.
Custom 12.
Desai 3.
Endowment 39.
Enhancement 6, 31.
Gift 11, 13, 17.
Hereditary Office 5.
Hindoo Law (Adoption) 10, 47.
" (Coparcenary) 18.
Hindoo Widow 20, 28.
Jurisdiction 32, 38, 50.
Karanavan 5.
Lakheraj 1, 4.
Limitation (Act XIV of 1859) 25, 26.
" (Act IX of 1871) 55, 66, 104.
" (Act XV of 1877) 28.
Market 1.
Mesne Profits 1.
Money-Decree 1.
Mortgage 88, 92, 122, 127.
Municipal 14.
Onus Probandi 3.
Partition 11, 12.
Patel 1.
Plaint 8.
Possession 7, 13, 15, 20.
Privy Council 17.
Puttee 2, 7.
See Relief 1.
Relinquishment 3.
Res Judicata 27, 39.
Reversioner 1, 2.
Right of Way 2.
Special Appeal 7.
Splitting Cause of Action 2, 4.
Title 1.
Trust 12.
Will 11.

Decree.

1. Transfer of —. *See* Assignment 2; Transfer 2; *post* 5.

2. A clerical error in the — of the Court below was ordered to be amended at the hearing of the appeal. (O. J. Ap.) I. L. R. 1 Bom. 1.

3. Conditional —. *See* Mortgage 54, 60; Pre-emption 1.

4. When a direction contained in a — referred to the time at which such — should become final: *Held* (the case being one in which a special appeal lay) that such — does not become final on being affirmed by the Lower Appellate Court, but on the expiry of the period of special appeal, or, where such an appeal was instituted, when the decision of the Lower Appellate Court was affirmed by the High Court. I. L. R. 1 All. 132. *But see* I. L. R. 1 All. 293.

5. Sale of — of immoveable property. *See* Sale (in Execution of Decree) 16.

6. Final —. *See* Execution of Decree 15; Limitation (Act IX of 1871) 49; Practice (Review) 20, 21; Privy Council 45; Res Judicata 36; *ante* 4.

7. A claimed certain lands, claiming one portion of such lands under one title, and the remainder under another and separate title. In the schedule to his plaint he gave the boundaries of the entire lands claimed by him, but did not give any boundary between the lands claimed by him under one title and the lands claimed by him under the other title. The Lower Appellate Court confirmed so much of the first Court's — as declared plaintiff's right to the first portion of the land, and dismissed his suit as to the remainder; and there being no evidence to show what lands in particular out of the whole claim were comprised in the first portion for which it gave him a —, directed them to be ascertained in execution: *Held* that the — was bad, as it should have specified the particular lands decreed. I. L. R. 4 Cal. 69.

8. — by Consent. *See* Limitation (Act XV of 1877) 33; Mahomedan Law 8, 9.

9. Partial —. *See* Mesne Profits 9.

10. The plaintiff sued on a bond in which real property was hypothecated. In his claim the property hypothecated was detailed, and the property itself was impleaded as a defendant, and he obtained a — in the following terms, "Decree for plaintiff in favor of his claim and costs against defendant": *Held* that the — was to be regarded as simply for money and not for enforcement of lien. I. L. R. 2 All. 342, 345.

11. The right under a — cannot be severed, so that the remedy against the person can remain in or pass to one, and the alternative remedy against the property pass to another. I. L. R. 2 Mad. 119.

12. Barred —. *See* Limitation (Act XV of 1877) 24, 25.

13. Where the Court of first instance held that the land sued for was not included in the defendant's garden, and they were not the owners of it, but that they could not be ejected from it as they were in possession under a lease which had not expired, and that the question whether such land was included in the defendant's garden and they were the owners if it was not *res judicata*; and the Court made a — dismissing the suit in these terms, "Ordered that the plaintiff's claim as it stands at present be dismissed": *Held* that the defendants were entitled, under Act X of 1877 s. 540, to appeal from such —. (F. B.) I. L. R. 2 All. 497.

14. Joint —. *See* Contribution 2.

15. Personal —. *See* Ancestral Property 2.

16. The material findings in each case should be em-

DECREE (*continued*).

bodied in the —, and if they are not it is incumbent on the parties to avoid their being bound by decisions against which they have no right of appeal, to apply to amend the — in accordance with the judgment. (F. B.) I. L. R. 6 Cal. 319.

See Account 3.
Adjustment 1.
Ancestral Property 2.
Arbitration 9, 12, 24.
Boundary 2.
Collusive Decree.
Construction 2.
Cross Decree.
Declaratory Decree.
Dower 8.
Enhancement 35.
Estoppel 14.
Execution of Decree.
High Court 18, 30.
Hindoo Law (Adoption) 18.
Limitation (Act IX of 1871) 12.
Maintenance 6.
Money-Decree.
Partition 23.
Practice (Appeal) 2, 16.
,, (Commissions) 5, 6, 8.
,, (Review) 4.
,, (Suit) 5, 6, 11.
Privy Council 26.
Purchase-Money 1.
Stamp Duty 16.

Deed.

1. Copy of —. *See* Evidence (Documentary) 3.

2. One of the obvious consequences of a long delay in bringing a suit to impeach a — as not genuine is that, after the lapse of years, witnesses disappear, and the recollection of those who survive becomes dimmed and less accurate than it might have been if the enquiry had taken place at an earlier period. In this case the three principal and two at least of the attesting witnesses were dead, and the plaintiff was held to have failed in presenting a strong case, as he was bound to do, when he asked the Court to set aside a — which had been acted upon for nearly twelve years. (P. C.) 3 P. C. R. 581.

3. Construction of ambiguous stipulation in a —. *See* Partnership 9.

See Construction 1.
Deed of Sale.
Purdah Woman 2, 3, 6, 9.
Registration.

Deed of Sale.

1. A — which is proved by all the attesting witnesses ought not to be set aside on a mere possible suspicion of perjury and forgery. (P. C.) 2 P. C. R. 383 (15 W. R. P. C. 12; 6 B. L. R. 501).

2. Where plaintiff alleges that he agreed to sign and did execute a — for a consideration of a sum of money, in consequence of pressure put upon him, he cannot be allowed to treat the — as a nullity, and both to avoid the — and retain the money. (P. C.) 2 P. C. R. 429 (15 W. R. P. C. 50; 7 B. L. R. 186; 14 Moo. 40).

3. The question being whether plaintiff, a pleader, had obtained the property in dispute by a valid —, it was held somewhat dangerous for the High Court to allow plaintiff, a professional man, who did not give evidence in his own suit on his own behalf, to be called to support his case (after it had broken down) as to the payment of the consideration-money. (P. C.) 2 P. C. R. 763 (19 W. R. 118).

4. The circumstance of defendant having in a previous suit admitted the execution of the —, did not preclude her from contesting its validity and maintaining that it was colorable, not real. (P. C.) *Ib.*

5. Although, when a — containing an acknowledgment of payment is written, payment is not made, it may become an acknowledgment afterwards, *i.e.*, when the deed is handed over. (P. C.) 2 P. C. R. 790 (19 W. R. 149).

6. The — in this case, which plaintiffs sought to set aside as fabricated and fraudulent, was held to have been executed by the principal plaintiff's grandmother, with her knowledge and by her authority, with the intention of vesting the property therein referred to in the defendants. (P. C.) 3 P. C. R. 333 (26 W. R. 86).

7. Plaintiff, a putneedar and durputneedar, granted certain sub-tenures by way of durputnee and seeputnee (reserving the minerals) to the defendants, to whom he by —, executed some ten or twelve years afterwards, transferred all the superior interest which he had, together with the minerals which had been reserved. In a suit to set aside the —, it was held that the defendants were not, at the time of the execution of the —, in a fiduciary capacity or character to the plaintiff, or in a position unduly to influence his judgment; that there was no satisfactory evidence that the defendants had represented to him that he was not parting with his mining rights by the —; and that the evidence of inadequacy of price was not such as to lead to the conclusion that the plaintiff did not know what he was about, or was the victim of some imposition. (P. C.) 3 P. C. R. 455 (I. L. R. 3 Cal. 192).

See Benamee 10, 18.
Consent 1.
Custom 12.
Evidence 7, 8, 11.
Guardian and Minor 10.
Hindoo Widow 19, 20.
Registration 6, 15, 22, 37.
Sheriff 7.
Stamp Duty 8.
Vendor and Purchaser 1, 2, 7.
Will 11.

Defamation.

1. A suit for damages for — of character cannot be maintained against witnesses for evidence given in a judicial proceeding, but may when it is substantially a suit for malicious prosecution. (P. C.) 2 P. C. R. 547 (17 W. R. 283, 11 B. L. R. 321). *See* 20 W. R. 177.

2. In dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the — are in substance true, but whether he was informed, and had good reason after due care and attention to believe that such allegations were true. (Cr.) I. L. R. 4 Cal. 124.

3. The accused person, an editor of a newspaper, published an article in which the following passage, admittedly referring to the complainant, occurred: "Has his (the complainant's) character been enquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapore to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" The Magistrate found that it was literally true that the complainant had been sent to be prosecuted, but that it was also true that the prosecution had, to the accused's knowledge, been ordered to be withdrawn by the District Judge: *Held* that, although the statement contained only the truth, it was incomplete and misleading; and that, as the accused was well aware that the prosecution referred to had been withdrawn, and did not injuriously affect the complainant's character, he could not plead that the imputation made by him on the complainant's character was made in good faith, or for the public good. (Cr.) I. L. R. 4 Bom. 298.

See Small Cause Court 83.

Default.

Defect of Parties.

Defence.

Defendant.

1. Titles of —. *See* Plaint 1.
2. — in possession. *See* Practice (Suit) 1*a*.

Delhi (ex-King of).

1. The estates given to the — were assigned for the support of his royal dignity and the due maintenance of himself and family, and constituted a tenure (if it could be so called) *durante regno*, so that on his deposition his estate and interest ceased, and all charges and incumbrances created by him out of that estate fell with the estate itself. (P. C.) 2 P. C. R. 726 (18 W. R. 389; 12 B. L. R. 167; L. R. I. A. Sup. 119).

Delivery.

Demand.

Demurrage.

Deposit.

1. When money or moveable property has been deposited in Court on behalf of a judgment-debtor in lieu of security, for the purpose of staying a sale in execution of a decree pending an appeal against an order directing the sale, which is afterwards confirmed on appeal, neither the depositor nor the judgment-debtor can afterwards claim to have such — refunded or restored to him, notwithstanding that the decree-holder has omitted to draw it out of Court for more than three years, and that more than three years have elapsed since any proceedings have been taken in execution of the decree, and that the decree for that reason is now incapable of execution. No question of limitation arises in the case. I. L. R. 4 Cal. 6.

2. *Semble* when money or moveable property is deposited in Court in such a case as the above, the Court, upon confirmation of the order for a sale, holds the — in trust for the decree-holder, and is at liberty to realize it and pay the proceeds over to him to the extent of his decree. *Ib.*

3. Payment into Court. *See* Payment 3.

Desai.

1. An annual allowance for Palki Huk (Palankeen allowance) to the holder of the hereditary office of — of Brooch, held under a Jagheer grant, charged by former Native Governments on the land revenues of that pergunnah, is incident to the tenure of —, and is not resumable by Government.—(P. C.) 14 Moo. 551.

2. Such money allowance paid by Government out of the land revenue of a particular pergunnah to successive Desais, for upwards of 30 years, does not create a prescriptive title, as such money payment is not "immoveable property" within the meaning of Reg. V of 1827 (Bombay) s. 1 cl. 1. (P. C.) *Ib.*

3. The Privy Council, in upholding a decision of the High Court that property appertaining to the hereditary office of — was partible, accompanied it by a declaration that the decree was to be without prejudice to the defendant's right to such emoluments or allowances for the performance of the duties of the office of — as he might be entitled to under any law in force. (P. C.) 3 P. C. R. 757 (L. R. 7 I. A. 162; I. L. R. 4 Bom. 494).

4. The onus of proving impartibility lies upon the — by showing a special tenure or a family or local custom sufficiently strong to rebut the operation of the general law. (P. C.) *Ib.*

Desertion.

See Conjugal Rights 2.
Divorce 4, 6, 7.
Husband and Wife 7.

Deshmukhs.

1. The right of the —, whether in its inception and original character or by reason of the alterations in its character that have subsequently taken place, was held to be in the nature of a grant of revenue (their functions being those of a collector of revenue for the Government), and therefore excluded from the jurisdiction of the Civil Courts by the Pensions Act, XXIII of 1871 s. 4. (P. C.) 3 P. C. R. 390 (L. R. 4 I. A. 119; I. L. R. 2 Bom. 99). *See also* recent judgment of P.C., not yet reported, in *Maharaval Mohansingji Jeysingji* v. *Government of Bombay*, 8 March 1881.

Deveraja Swamis Pagoda.

See Hindoo Law (Religious Ceremonies) 2.

Dewan.

See Information 1.

Dharmakarta.

See Endowment 29.
Limitation (Act IX of 1871) 37.
Prostitution 2.

Diluvion.

See Churs.

Disability.

See Blindness.
Deaf and Dumb.
Guardian and Minor 9, 10.
Hindoo Law (Inheritance and Succession) 18.
Incapacity.
Insanity.
Leprosy.
Limitation 3, 8.
,, (Act IX of 1871) 41.

See Pre-emption 2.
Self-acquired Property 1.
Slave 1.

Discharge.

1. Where a Magistrate takes up a case under Act X of 1872 s. 295, his only proper course is to proceed under s. 296, and report the case to the High Court, which (under s. 297) may order the accused persons to be tried, if of opinion that they have been improperly discharged. (Cr.) I. L. R. 1 Cal. 282 (25 W. R. Cr. 30). *See also* I. L. R. 2 Bom. 534; I. L. R. 4 Cal. 647. *See* I. L. R. 2 All. 570.

2. It is illegal and *ultra vires* on the part of a Magistrate to revive before himself criminal proceedings against an accused who had already been discharged under Act X of 1872 s. 215, where no further evidence is procurable than that which was before the Court on the first occasion. When the — has been improper, the only proper course open to a Magistrate is to report the case to the High Court for orders, and that Court, if of opinion that the accused has been improperly discharged, will order a re-trial. (Cr.) I. L. R. 2 Cal. 405. *See also* I. L. R. 2 Bom. 534.

3. A Magistrate is bound, before he discharges an accused person under the above section, to examine all the witnesses, and should not refuse to examine witnesses simply because their evidence will be to the same effect as that already taken for the prosecution. (Cr.) I. L. R. 3 Cal. 339. *See also* I. L. R. 2 All. 447.

4. A Magistrate has no power to remand a criminal case to a Subordinate Magistrate for re-trial after the case has once been dismissed; the courses open to him are (1) to accept a fresh complaint supported by fresh evidence which was not before the Court when the case was dismissed, or (2) if there be no additional evidence to be procured, to report the case for the orders of the High Court under Act X of 1872 s. 296. (Cr.) I. L. R. 4 Cal. 647.

5. A "revival of a prosecution," as mentioned in Act IV of 1877 s. 87 expl. 2, is not a continuation of the original prosecution from which the accused has been discharged. On the revival of the prosecution, all the witnesses on whose evidence the prosecution intend to rely must be examined before the Magistrate; and if any of them were examined at the time of the original prosecution, they must be examined *de novo*. (Cr.) I. L. R. 5 Cal. 121.

See Attorney and Client 5, 8.
Commitment 1, 2, 4, 9.
Contempt of Court 6.
Dismissal of Complaint 1.
Guarantee 2.
Insolvency 21, 23.
Khas Mehal 1.
Limitation (Act IX of 1871) 83.
Principal and Surety 2, 7, 12.
Property seized by Police 1, 2.

Disclaimer.

See Estoppel 13.
Hindoo Widow 7.
Maintenance 4.
Waiver.
Will 3.

Disinherison.

See Hindoo Law (Inheritance and Succession) 36, 37.
Inheritance 1.
Will 36.

Dismissal.

1. — of application. *See* Execution of Decree 38; Limitation (Act IX of 1871) 89.

DISMISSAL (*continued*).

See **Discharge.**
Dismissal of Complaint.
Dismissal of Suit or Appeal.
Ghatwals 5.
Master and Servant 1, 2.

Dismissal of Complaint.

1. A warrant case of a nature not compoundable under s. 214 Penal Code was "dismissed" on the parties coming to an amicable settlement: *Held* that the "dismissal" was equivalent to a discharge under Act X of 1872 s. 215, and that the composition did not affect the revival of the prosecution if that should otherwise be thought necessary or expedient. (Cr.) I. L. R. 1 Bom. 64.

Dismissal of Suit or Appeal.

1. Where the plaintiff in a suit failed to deposit the *tullubana* required for the purpose of issuing summons to certain persons whom it was proposed to make defendants in addition to the original defendants in such suit, and the Court on that ground irregularly dismissed such suit as against such original defendants by an order purporting to be made under Act VIII of 1859 s. 110 on a day previous to that fixed for the hearing of such suit: *Held* that such order of dismissal did not preclude the plaintiff from instituting a fresh suit. I. L. R. 2 All. 318.

2. When an appeal is dismissed, under Act X of 1877 s. 556, for the appellant's default, the order dismissing it is not appealable. I. L. R. 2 All. 616.

See **Adjournment 2.**
Arbitration 26.
Decree 13.
Mortgage 126.
Practice (Appeal) 21, 25, 26, 27.
,, (Suit) 19, 23.
Privy Council 45.
Res Judicata 10, 11, 28.
Slander 1.

Dispossession.

See **Declaratory Decree 18.**
Jurisdiction 31.
Land Dispute 1, 2, 5.
Limitation 48.
,, (Act IX of 1871) 70.
,, (Act XV of 1877) 23.
Meerasee 6.
Possession 14, 18.
Right of Occupancy 12.
Sale (in Execution of Decree) 21, 22, 29.

Disqualification.

See **Court of Wards 1.**
Endowment 38, 39.
Hindoo Law (Inheritance and Succession) 32.
Will 62.

Distraint.

1. The defendants (landlords) distrained certain produce, the property of plaintiff then lessee, in view to selling it for alleged claims for rent. The Sub-Collector, finding that the formalities required by the Act had not been observed, removed the attachment and directed the restoration of the property. The defendants having refused to restore the property, the plaintiff brought this suit under Act VIII of 1865 (Madras) to recover the value of the produce: *Held* that such wrongful withholding of the property being an act in direct disregard and defiance of the Act, did not constitute a cause of action triable by a summary suit under that Act. I. L. R. 2 Mad. 42.

2. A landlord whose tenant's crops have been wrongfully distrained by a stranger, has a right to sue to set aside such wrongful —. I. L. R. 4 Cal. 890.

See **Attachment 14, 15.**
Criminal Trespass 3.
Jurisdiction 14.

Divorce.

1. In this case the Privy Council held that Act XIV of 1859 did not apply to suits for — *a vinculo;* that co-respondent's application for a commission to examine him should have been acceded to; that the statements of the respondent were not evidence against the co-respondent; and that there was not sufficient evidence to support the decree. (P. C.) 2 P. C. R. 721 (18 W. R. 480; 10 B. L. R. 301; L. R. I. A. Sup. 106).

2. Documentary evidence, though not necessary, is still desirable to prove a — under Mahomedan law. (P. C.) 2 P. C. R. 882 (20 W. R. 214).

3. Where a Hindoo husband sued his wife for restitution of conjugal rights, and the defendant pleaded —: *Held* that, though the Hindoo law does not contemplate —, still in those districts where it is recognized as an established custom, it would have the force of law. I. L. R. 3 Cal. 305.

4. In a suit by a wife for a dissolution of her marriage on the ground of her husband's adultery and desertion, the adultery was proved, and it was found that the wife, notwithstanding the gross misconduct of her husband, continued to live with him for some years, during which time she supported him and herself by her own earnings; that under the pressure of pecuniary difficulties brought about by his extravagance and dissolute habits, they came to an arrangement by which she went to live with her friends, and he resided at his mother's house, until they could again find means to provide a common house; that for two years previously to the separation, though they had lived together, no conjugal intercourse owing to the husband's misconduct had taken place between them; and that he left his mother's house without telling his wife where he was going, and subsequently went to Madras where he had since resided: *Held* that the separation, though originally effected by mutual consent, yet not being brought about by the act of the wife but by the husband's misconduct, the desertion was proved, and the wife was entitled to a decree for a dissolution of marriage. (O. J. Ap.) I. L. R. 3 Cal. 485.

5. Whilst on the one hand there is no absolute limitation in the case of a petition for dissolution of marriage, yet the first thing which the Court looks to when the charge of adultery is preferred, is whether there has been such delay as to lead to the conclusion that the petitioner had either connived at the adultery, or was wholly indifferent to it; but any presumption arising from apparent delay may always be rebutted by an explanation of the circumstances. (Cr.) I. L. R. 3 Cal. 688.

6. A husband and wife living in British Burmah separated in 1861; the wife, for reasons of convenience, going to England, but with no intention of a permanent separation. After her departure the husband contracted an adulterous connection with a Burmese woman, which, however, was unknown to the wife till 1875. During the separation he kept up correspondence with his wife, and in some of his letters he expressed his intention of never returning to England; and in 1868 expressed his willingness to aid her in obtaining a —. The wife never openly consented to the separation, although she could not be said to have made any active opposition to it: *Held* that the wife was not entitled to a —, but only to a judicial separation, as there was no evidence of desertion. I. L. R. 4 Cal. 260.

7. Desertion under the Indian — Act (IV of 1869) s. 3 cl. 9 "implies an abandonment against the wish of the person charging it," and although the word "abandonment" is undefined, the effect of the clause is to introduce into the Indian Statute the view adopted by the Courts in

DIVORCE (*continued*).

England in construing the English Act. The expression "against the wish of" is to be construed as meaning contrary to an actively expressed wish of the person charging abandonment, and notwithstanding the resistance or opposition of such person. *Ib.*

8. A wife is bound, when seeking to prove desertion, to give evidence of conduct on her part, showing unmistakably that such desertion was against her will. *Ib.*

9. Where a Mahomedan said to his wife, when she insisted against his wish on leaving his house and going to that of her father, that if she went she was his paternal uncle's daughter, meaning thereby that he would not regard her in any other relationship and would not receive her back as his wife: *Held* that the expression used by the husband to the wife, being used with intention, constituted, under Mahomedan law, a — which became absolute if not revoked within the time allowed by that law. I. L. R. 2 All. 71.

10. The mere pronunciation of the word "talak" three times by the husband, without its being addressed to any person, is not sufficient to constitute a valid — by Mahomedan law. I. L. R. 4 Cal. 588.

11. *Semble* that a — pronounced in due form by a man against a woman who is in fact his wife, dissolves the marriage, though he pronounces it under a belief that she is not his wife. *Ib.*

12. In a suit for judicial separation between persons subject to Act X of 1865 s. 4, the Court will not, unless under exceptional circumstances, order the husband to give security for his wife's costs. (O. J. Ap.) I. L. R. 5 Cal. 357.

13. The principle upon which the — Court in England acts, in requiring the husband, in a suit for judicial separation, to provide for his wife's costs, is based upon the absolute right which the law formerly gave the husband upon marriage to the whole of his wife's personal estate, and to the income of her real estate, leaving her destitute of all means to conduct her case; but this state of the law has been completely altered in India by Act X of 1865 s. 4, which prevents any person from acquiring, or losing, rights in respect of property by marriage. (O. J. Ap.) *Ib.*

See Husband and Wife 15.
Maintenance 11.

Dock.

See Reclaimed Land.

Documents.

1. Under Act X of 1877 s. 130, a Judge has no discretion to refuse to allow inspection of — relating to matters in question in a suit, provided they are not privileged. I. L. R. 2 Bom. 453.

2. Confidential communications between principal and agent, relating to matters in a suit, are not privileged. *Ib.*

3. In a suit for an injunction to restrain the defendants from using certain trade-marks, telegrams and letters between the plaintiffs' firm in London and their managing agent in Bombay, relating to the subject-matter of the suit, were held not privileged. *Ib.*

4. Where a void or voidable document cannot legally be used for the purpose which is apprehended, there is no such reasonable apprehension that such document, if left outstanding, will cause such injury as will entitle the person claiming the cancellation of such a document, to relief. I. L. R. 1 All. 622.

5. — which have not been proved, but simply filed in accordance with an usage in the Mofussil, should not be put up with the record. It is the duty of a Judge to pass over such — as unproved, but it is also the duty of the pleader of the party, against whom they are intended to be used, to insist that they should not remain on the record at all. I. L. R. 5 Cal. 317.

6. Old document. *See* Evidence (Documentary) 12, 13; Evidence (Secondary) 3.

See Attorney and Client 5, 6, 8, 9, 11.
Evidence (Documentary) 2, 4.
„ (Oral) »

See Limitation (Act IX of 1871) 69.
Practice (Suit) 7, 9, 17.
Stamp Duty 9.
Telegram.

Domicile.

See Hindoo Law (Inheritance and Succession) 1.
Husband and Wife 12.
Jurisdiction 23.
Legitimacy 2.
Succession 2.
Will 6, 45.

Donatio Mortis Causâ.

See Gift, 1, 17.
Purdah Woman 2.

Dower.

1. Where in a deed of — it was not mentioned that any property was pignorated for the —, and the — was not demanded during the lifetime of the husband (a Mahomedan of the Imameeah sect), the widow was held entitled to take possession of her husband's effects by virtue of her claim for — to the amount of her —, and to alienate a part of them in satisfaction of the same. (P. C.) 2 P. C. R. 989 (6 Moo. 211).

2. Upon a true construction of this settlement, it was held that the widow had a right of suit without a previous demand, and that she was not obliged to sue her husband immediately or in his lifetime, and that consequently limitation under Reg. III of 1793 s. 14 did not apply. (P. C.) *Ib.* *See also* 6 *post.*

3. Mode of ascertaining whether the — was paid off where the widow was put into possession of her late husband's property, and she and her heir continued in possession for fifteen years. (P. C.) 2 P. C. R. 334 (14 W. R. P. C. 5; 5 B. L. R. 570).

4. Hypothecation of an estate for —; right of widow in possession; presumption as regards amount of —. (P. C.) 2 P. C. R. 531 (17 W. R. 113; 10 B. L. R. 45; 14 Moo. 377).

5. A widow's claim for unpaid —, when it does not become a preferential charge on the estate, constitutes a debt payable *pari passu* with the demands of other creditors. (P. C.) 2 P. C. R. 599 (17 W. R. 525).

6. Limitation how applied in a case of prompt — under the Mahomedan law, in which there is nothing to limit the amount fixable for —. (P. C.) 2 P. C. R. 766 (11 B. L. R. 375; L. R. I. A. Sup. 135).

7. Where no defence was set up in the first Court that the amount of — fixed was a mere sham and never intended to be acted upon, the Appellate Court ought not to suggest or give effect to such a defence. (P. C.) *Ib.*

8. Form of decree for — against representatives of the deceased. (P. C.) *Ib.*

9. The shares of heirs cannot be ascertained until all debts have been satisfied. It is only the balance, after paying all debts, that, according to the Mahomedan law, is divisible amongst them. A compromise operates for the benefit of all those amongst whom the estate is divisible, and the balance is divisible amongst them. (P. C.) *Ib.*

10. Where the Privy Council authorized the Lower Court to determine what plaintiff's mother's share of — was. (P. C.) 2 P. C. R. 462 (16 W. R. P. C. 22); 2 P. C. R. 823 (19 W. R. 315).

11. Where it is not expressed whether the payment of the — is to be prompt or deferred, the rule is to regard the whole as due on demand. (P. C.) 2 P. C. R. 823 (19 W. R. 315).

12. Where a Mahomedan lady applied for leave to sue her husband *in formâ pauperis* for her —, and the application was rejected, it was held not to constitute a demand for prompt — sufficient to set the period of limitation running. (P. C.) 3 P. C. R. 182 (24 W. R. 163; 15 B. L. R. 306; L. R. 2 I. A. 235).

13. Under Mahomedan law, if the wife's — is prompt,

Dower (*continued*).

she is entitled, when her husband sues her to enforce his conjugal rights, to refuse to cohabit with him until he has paid her her —, and that notwithstanding that she may have left his house without demanding her — and only demands it when he sues, and notwithstanding also that she and her husband may have already cohabited with consent since their marriage. I. L. R. 1 All. 483. *See also* I. L. R. 2 All. 831.

14. When at the time of marriage the payment of — has not been stipulated to be deferred, payment of a portion of the — must be considered prompt. The amount of such portion is to be determined with reference to custom. Where this is no custom, it must be determined by the Court with reference to the *status* of the wife and the amount of the —. *Ib.*

15. Where a Court following the above rule determined that only one-fifth of a — of Rs. 5000, not stipulated to be deferred, must be considered prompt, inasmuch as the wife had been a prostitute and came of a family of prostitutes, it exercised its discretion soundly. *Ib.*

16. Under Mahomedan law when, on marriage, it is not specified whether a wife's — is prompt or deferred, the nature of the — is not to be determined with reference to custom, but a portion of it must be considered prompt. The amount to be considered prompt must be determined with reference to the position of the wife and the amount of the —, what is customary being at the same time taken into consideration. I. L. R. 1 All. 506.

17. Where a Mahomedan (Sheeah) on his marriage, being in poor circumstances, fixed a deferred — of Rs. 51,000 upon his wife, and died without leaving sufficient assets to pay such —, and his wife sued to recover the amount of such — from his estate: *Held* that a Mahomedan widow was entitled to the whole of the — which her deceased husband had on marriage agreed to give her, whatever it might amount to, and whether or not her husband was comparatively poor when he married, or had not left sufficient assets to pay the — debt. (F. B.) I. L. R. 2 All. 573.

See Debtor and Creditor 1.
Gift 10, 17.
Mahomedan Law 5.

Dowl Fehrist.

See Registration 26.

Dowry.

See Gift 16.

Drain.

See Res Judicata 39.

Drainage.

See Irrigation.
Limitation (Act IX of 1871) 5, 36.
Public Thoroughfare 1.
Right to Water 1, 2.

Duress.

See Coercion.
Contract 4, 5.

Earnest Money.

See Registration 15, 42.
Sale 6.

Easement.

See Libel 1.
Limitation 41.
„ (Act IX of 1871) 4, 8, 9, 36.
„ (Act XV of 1877) 42, 43.
Plaint 8.
Public Thoroughfare 1.
Res Judicata 39.
Right to Light and Air 7.
Right to Water 2, 3.
Watercourse 1.

East Indian.

See Succession 1.

Education.

See Guardian and Minor 5.
Hindoo Law (Coparcenary) 10.
Will 51.

Ejectment.

1. A suit for — brought by the landlord against a cultivating ryot, whose tenancy can only be determined by a reasonable notice to quit at the end of the year, is liable to dismissal on the plea of want of such notice.—(F. B.) 25 W. R. 329 (I. L. R. 2 Cal. 146). *See also* I. L. R. 4 Cal. 339.

Proceedings in a Criminal Court under Act X of 1872 s. 530 are not tantamount to a notice to quit. I. L. R. 4 Cal. 339.

2. Under Act VIII of 1869 (Bengal), a suit in — will lie for arrears of rent of a *bhaolee* tenure. I. L. R. 2 Cal. 374.

3. In a suit for arrears of rent by a mokurrureedar against his dur-mokurruredar, a decree was passed ejecting the latter, and as a consequence, the tenure of the dur-mokurrureedar was cancelled: *Held* that a mortgagee from the dur-mokurruredar, who had, previously to the rent suit, obtained a decree on his mortgage and purchased himself at the auction-sale, and who had not been made a party to the rent suit, was entitled to question by suit the validity of the decree obtained in the rent suit ordering — of the dur-mokurrureedar. I. L. R. 4 Cal. 520.

4. The only remedy for a party in the position of an occupancy ryot who alleges he has been ejected in contravention of the proviso to Act VIII of 1869 s. 22, is a suit on the ground of the illegal —, and such a suit must, under s. 27, be brought within one year from the —. I. L. R. 4 Cal. 527.

5. The effect of an order of — under Act VIII of 1869 (Bengal) s. 53 is to dispossess the ryots, not only of the land, but also of the crop standing thereon, the object of such an — being to terminate completely the connection between the parties as landlord and tenant. I. L. R. 5 Cal. 135.

6. An appeal does not lie to the High Court from a decision of a District Judge staying execution in a suit for arrears of rent and for — where the value of the amount decreed is less than Rs. 100. Nor can an application, made to eject the tenant on his default to pay into Court the moneys due under the decree within the time fixed by Act VIII of 1869 (Bengal) s. 52, confer such right of appeal. I. L. R. 5 Cal. 594.

See Arbitration 26.
Building 1.
Churs 12, 20.
Criminal Trespass 8.
Decree 13.
Enam 3.
Estoppel 19.
Ghatwals 3.
Hindoo Widow 35.
Julkur 9.

Ejectment (*continued*).

See Jurisdiction 1, 34, 48, 50.
Land Dispute 1, 2.
Landlord and Tenant 2, 12.
Limitation 10, 14.
„ (Act IX of 1871) 31.
„ (Reg. II of 1805) 2.
Meerasee 3, 6.
Mortgage 24, 56, 107.
Oudh 5.
Possession 7*a*, 9, 17.
Practice (Suit) 1.
Putnee 10.
Res Judicata 29.
Right of Occupancy 6.
Service Tenure 6.
Talook 1, 2.

Election.

See Hindoo Widow 59.
Small Cause Court.

Embankment.

1. Where a defendant shows a prescriptive right to maintain a *bund*, and uses all reasonable and proper precautions for its safety, he cannot be made liable for damage caused by the escape or overflow of water on to the lands of others and the consequent injury of the crops thereon, if the escape or overflow be caused by the act of God, or *vis major*. I. L. R. 3 Cal. 776.

See Tank 1.

Emblements.

See Crops.
Customs 17.

Enam.

1. Resumption or forfeiture of — grants under Reg. IV of 1831 (Madras Code). (P. C.) 2 P. C. R. 254 (12 W. R. P. C. 33 ; 13 Moo. 104).

2. A sunnud by the State purporting to grant a village in — "including the waters, the trees, the stones and quarries, the mines, and the hidden treasures, but excluding the Hukdars and Enamdars," was held to be a grant by the State of such proprietory right as it had in the soil of the village to the grantee. It is open, however, to the grantor to say that such words as the above mean nothing but land revenue. The saving of the rights of the Hukdars and Enamdars does not prevent the property in the soil, so far as it can be regarded as vested in the Government, from passing to the grantee. I. L. R. 1 Bom. 523. *See* I. L. R. 3 Bom. 340.

3. In a suit for partition of the joint — lands of a Hindoo family, it was not disputed that the plaintiffs were entitled to the share which they claim, but they joined as defendants a number of cultivating ryots whom they sought to eject. The ryots pleaded that the lands had been reclaimed by their forefathers, and that they and their fathers had been in possession ever since, and that they had thereby acquired a permanent right of occupancy; they also pleaded that the suit was bad for multifariousness: *Held* that the ryots were improperly joined as defendants in the present suit. *Semble* that, even if the ryots had not a permanent tenure, they could not be ejected except upon notice at the end of the Fuslee, so long as they paid the rent due upon the lands. I. L. R. 1 Mad. 333.

4. Act II of 1863 s. 6 cl. 2, as to non-recognition of adoption by any Civil Court, relates only to the question of the assessability of lands when raised between Government and a claimant of exemption. It is not open to a party to rely upon a provision, of which Government only is entitled to take advantage. In an enquiry under Act XI of 1852, the — Commission, on 30th January 1865, decided that a certain — village should be continued to the male descendants of the original grantee: *Held* that the decision of the — Commission was only intended to regulate the duration of the exemption of the — village from assessment, and not to regulate the enjoyment of it as between the heirs of the original grantee. I. L. R. 2 Bom. 529.

5. Unless the terms of his — grant authorize an *enamdar* to enclose a piece of land used immemorially as pasture ground by the inhabitants of his — village, he cannot do so at will merely by virtue of his being an *enamdar*. I. L. R. 3 Bom. 147.

See Enhancement 25, 29.
Hindoo Widow 50.
Meerasee 8.
Mortgage 13.

Encroachment.

See Enhancement 26.
Practice (Suit) 1.

Endowment.

1. Effect of a will by a *mohunt* appointing his spiritual brother as his successor with a direction as to who should be the latter's successor. (P. C.) 2 P. C. R. 86 (8 W. R. P. C. 25 ; 11 Moo. 405).

2. The only law as to *mohunts* and their offices, etc., is to be found in custom and practice, which is to be proved by testimony. (P. C.) *Ib. See also post* 12, 24.

3. There cannot be two existing *mohunts*, and the offices cannot be held jointly. (P. C.) *Ib.*

4. Where land is dedicated to the religious services of an idol, the rents of the land legally constitute the property of the idol, and the *shebait* has not the legal property but only the title of manager of a religious —, and cannot alienate the property though he might create proper derivative tenures and estates conformable to usage, but not a *mourosee* tenure, or a tenure at a fixed invariable rent. (P. C.) 2 P. C. R. 300 (13 W. R. P. C. 18 ; 13 Moo. 270).

5. The appropriation of property to the religious services of a family does not require the assent of the State; and where such a trust appears to have been established as to the lands dedicated, it lies on the opposite party to show some legal conversion of the lands to the ordinary uses of property. (P. C.) 2 P. C. R. 512 (17 W. R. 41 ; 10 B. L. R. 19 ; 14 Moo. 289).

6. The purchaser of joint family property, with notice of its dedication to religious purposes, and without enquiry as to the termination of the trust, cannot exonerate the property from the trust. (P.C.) *Ib.*

7. A former breach of trust cannot be pleaded against a trustee, though it would be a reason for excluding him from the administration of the property as *shebait*. (P.C.) *Ib.*

8. The Privy Council did not consider that the presumption arising from general Hindoo usage, that an — of idols is usually made by Hindoos with the object of preserving the *sheba* of worship in families rather than of conferring a benefit on individuals, was sufficient of itself, in the absence of any language denoting the intention of the donor that the gift should belong to the family, to impress that construction upon it. (P.C.) 2 P. C. R. 661 (18 W. R. 226 ; 11 B. L. R. 86.)

9. Exposition of the manner in which the Privy Council construed two deeds; one as denoting an intention to perpetuate the worship in the family, and the other as intended to make an absolute gift to the donee, with full dominion over the property and worship. (P. C.) *Ib.*

10. The purchase of property in the name of an idol where the purchase-money did not come from funds appropriated to the use of the idol, was held not to be an —. (P.C.) 2 P. C. R. 869 (20 W. R. 95).

11. Nature of the relations subsisting between the *muth* of Tirpuntal, Zillah Tanjore, in the Madras Presidency, and the *muth* at Benares. (P.C.) 2 P. C. R. 886 (20 W. R. 217).

12. The constitution and rules of religious brotherhoods attached to Hindoo temples are not uniform, but depend

ENDOWMENT (*continued*).

on the special laws and usages governing each. (P.C.) 3 P C. R. 17 (L. R. 1 I. A. 209). *See also* 3 P. C. R. 382 (L. R. 4 I. A. 76; I. L. R. 1 Mad. 235); *ante* 2; *and post* 24.

13. The Privy Council decided against the right of the Zemindar of Ramnad to appoint, confirm, and remove the Pandaram of the Ramaswarem pagoda. (P.C.) *Ib.*

14. Notwithstanding that property devoted to religious purposes is, as a general rule of Hindoo law, inalienable, it is competent for the *shebait*, as *shebait* and manager, to borrow money for the proper expenses of keeping up worship, repairing temples, defending litigation, and other like objects (his position and authority being the same as or analogous to those of a manager of an infant); but the power to incur debts must be measured by the existing necessity for incurring them; and judgments obtained against a former *shebait* in respect of debts so incurred are binding upon succeeding *shebaits*. (P.C.) 3 P.C. R. 102 (23 W. R. 253; L. R. 2 I. A. 145; 14 B. L. R. 450). *See also* 3 P. C. R. 375 (L. R. 4 I. A. 52; I. L. R. 2 Cal. 341).

15. A suit was brought by a Hindoo widow to recover her share, as heiress to her husband, in certain family property of which she claimed a portion in her absolute right, and a portion as one of the joint *shebaits* of certain idols. Among other properties plaintiff claimed one-fifth share in a talook, not as a debuttur property, but in right of her husband, as her absolute property. The first Court found that this share was the property of a certain idol, and held that she had not maintained the allegation in her plaint, and even if entitled to it in her right of joint *shebait*, she could not recover in that capacity, as she had sued as *shebait*. The Privy Council held the High Court right in treating this objection as one of substance, and in giving the relief prayed for. (P.C.) 3 P. C. R. 127 (23 W. R. 369.)

16. A memorandum of agreement, by which certain Government securities had been appropriated to the service of an idol, was refused to be set aside as a colorable transaction having no validity, merely upon the suggestion that the amount set apart was exorbitant and that there might possibly have been an intention to defraud widows and others. (P.C.) *Ib.*

17. In a suit by appellants to compel defendant to account for certain Government securities alleged by plaintiffs to have been given to defendant by their grandfather impressed with a trust for certain idols, to remove defendant from the office of *shebait* to those idols, and to appoint one of the plaintiffs in her stead: *Held* that it had not been proved with the requisite certainty that those notes were endorsed by the grandfather to the defendant impressed with the trust described in the plaint. (P.C.) 3 P. C. R. 210.

18. If a deed of — dedicates an estate to the service and worship of a particular idol, the property would be impressed with a trust in favor of it. Where the temple is a public temple, the dedication may be such that the family itself should not put an end to it; but in the case of a family idol, the consensus of the whole family might give the estate another direction. (P.C.) 3 P. C. R. 375 (L. R. 4 I. A. 52; I. L. R. 2 Cal. 341).

19. The *onus probandi* lies upon a party who sets up the case that property has been inalienably conferred upon an idol to sustain its worship. In this case it was held that there was not only weakness of proof on the part of the plantiff, but a very strong presumption arising from the conduct of the parties in the suit, that the property in question was not *dewuttur* as alleged by plaintiff. (P.C.) *Ib.*

20. Plaintiff relied upon certain statements in a *mourosee* pottah and a bill of sale as an admission which estopped the parties to them from asserting that the lands therein mentioned were not *dewuttur*. But their Lordships held that the statements must be taken as a whole, and so taking them it would appear that, granting that the lands were *dewuttur*, the sale would be justifiable, the statement being that the sale was not made for the purpose of the repair of the temple of the idol. (P.C.) *Ib.*

21. The grant of a *mokurruree* pottah cannot be said to be an improvident way of raising money, if necessary. It still left a rent for the sustentation of the idol; and if the transaction be *bonâ fide*, the subsequent sale of part of the rent was justified by the imperious necessity of furnishing the temple which had been commenced. (P. C.) *Ib.*

22. If only part of the money raised was required for the repairs of the idol, the deeds would not be wholly void because some of the money was raised for another purpose. Plaintiff should have offered to re-imburse the *bonâ fide* purchasers so much of the money as had been legitimately advanced. (P. C.) *Ib.*

23. Where an assignment transferred to the plaintiff the Uraima right, or right of management, of a pagoda, and all the rights of the existing trustees, including the right to the custody of certain jewels devoted to the service of an idol, the plaintiff's suit to recover the jewels was clearly not one for specific performance, but in the nature of an action for detinue. Persons holding such a trust are not legally competent to transfer it at their will. (P. C.) 3 P. C. R. 382 (L. R. 4 I. A. 76; I. L. R. 1 Mad. 235).

24. When owing to the absence of documentary or other direct evidence of the nature of the foundation, and the rights, duties, and powers of the trustees, it becomes necessary to refer to usage, the custom to be proved must be one which regulates the particular institution. Where the custom set up was one to sanction, not merely the transfer of a trusteeship, but the sale of a trusteeship for the pecuniary advantage of the trustee, such a circumstance alone would justify a decision that the custom was bad in law. (P. C.) *Ib.*

25. It is incumbent on the Court, when dealing with the disposition of her property by a *purdanusheen* woman, to be satisfied that the transaction was explained to her, and that she knew what she was doing. Especially where, for no consideration and without any equivalent, the lady, intending and desiring to retain the estate for her own life and to create an — by way of testamentary disposition of it after her death, executed a deed which deprived her of all her property. (P. C.) 3 P. C. R. 444 (I. L. R. 3 Cal. 324).

26. An — of the above description is not of such a public character as to sustain a suit under Act XX of 1863. (P. C.) *Ib.*

27. According to the construction of the will in this case, it was held that the property in dispute was not wholly *dewuttur*, but that the will created a charge upon the property for the expenses of the daily worship of an idol as it was performed at the time of the death of the testatrix, and of the poojahs, shradhs, and religious ceremonies for which provision was made by the will, the charge being termed generally a charge for such religious acts and ceremonies; that the surplus income belonged to the members of the joint family, of whom the respondent was one; and that his interest was liable to be attached and sold in satisfaction of a decree against him personally. (P. C.) 3 P. C. R. 694 (L. R. 6 I. A. 182; I. L. R. 5 Cal. 438).

28. In a suit by a Hindoo widow to recover possession of certain property dedicated to idols, as heir to her deceased husband, the last *Shebait*, it appeared that the plaintiff's husband was an adopted son of his predecessor in office, and that he was the eldest son of the first defendant, who was the nearest male cognate of the adoptive father. On behalf of the defendant, it was contended (1) that the adoption of an eldest son was invalid, and that consequently plaintiff's husband did not succeed rightfully to the Shebaitship; and (2) that the right of succession to a Shebaitship was not governed by the ordinary rules of inheritance, and that the plaintiff had no title thereto: *Held* that the adoption of an eldest son, where there are several sons, was not invalid by Hindoo law; that a Hindoo widow could not succeed to a Shebaitship as heir to her husband without proof of special custom; and that in this case there was no sufficient proof of such custom. I. L. R. 2 Cal. 365.

29. Held that plaintiff, having no longer any title to the property in question, was not in a position to treat defendant as a trespasser, and to call upon him upon that footing for an account of the past administration of the trust as Dharmakarta; and that the suit being substantially to remove the defendant from the trust and to establish plaintiff's title to the hereditary office, or, on failure of this, to secure the appointment of a fit and proper person to fill defendant's office, the account was only prayed for on that understanding, and therefore the plaintiff was not entitled to call for an account of the past administration of the trust, as a person interested in the religious trust. I. L. R. 1 Mad. 343.

ENDOWMENT (*continued*).

30. A suit was brought by a dancing girl to establish her right to the *meerasee* of dancing girls in a certain pagoda and to be put into possession of the said *meerasee* with the honors and perquisites attached thereto as set forth in schedules to the plaint annexed. The defendants denied the claim: *Held* that this case was distinguishable from that in I. L. R. 1 Mad. 168 in that there was no litigation in that case of any — attached to the office; whereas in this case the question of the existence of a hereditary office with endowments or emoluments attached to it ought to be enquired into, as that would materially affect the question of whether plaintiff had sustained injury by the interference of the first defendant. I. L. R. 1 Mad. 356.

31. Mode of nominating a successor to a *gooroo* from among his *chelas* amongst Sooniasis generally, or of electing and installing such successor when not nominated by the late *gooroo*. I. L. R. 1 All. 539.

32. In a suit by the Calcutta Punch of the Degumbery Sect of Jains, praying, *inter alia*, for the construction of a will, and for a declaration of their rights thereunder as members of the said Punch, and to have property dedicated by the will to religious purposes ascertained and secured: *Held* that the right in which the plaintiffs sued was sufficiently shown; that the Advocate-General was not a necessary party, although it was desirable that such suits should be brought only with his consent, or by the leave of the Court; and that suits of this description do not fall under Act XX of 1863, but come under the ordinary jurisdiction of the Court inherited from the Supreme Court and conferred upon that Court by its Charter, a jurisdiction similar in its general features to that of the Lord Chancellor in England. (O. J. Ap.) I. L. R. 3 Cal. 564.

33. In a suit for possession by partition, the plaint stated that the common ancestor of plaintiff and defendant and his five sons acquired certain properties; that, on the death of the ancestor, his five sons separated among themselves, and each took a certain share of land for his own expenses, and the remaining portion of the lands they held in *ijmalee* among themselves; that one of them became the manager of this portion of the lands, made the collection of the rents, and from the profits thereof paid the expenses of the festivals and the worship of the *debta*, all of which were alleged to be patrimonial, and divided the balance. The defence substantially was that the whole of the *ijmalee* land was the property of the idol. It was found in the Lower Court that a certain portion of the land was *dewuttur* and not partible, and a decree was made for partition of the remainder: *Held*, on appeal, that as it was not shown that this latter portion of the property had been transferred from the family and dedicated to the idol, a partition of it should be made, but subject to a trust in favor of the idol. I. L. R. 4 Cal. 56.

34. Worshippers or devotees of an idol are entitled to bring a suit, complaining of a breach of trust with reference to the funds or property belonging to the idol or appendant to its temple: *Quære* whether, if the suit had been brought after Act X of 1877 came into force, s. 539 of that Act could be held applicable to the *devasthán* of an idol or temple, dedicated merely to the purposes of such idol or temple. I. L. R. 3 Bom. 27.

35. A Mahomedan of the Shafee sect by a deed of settlement executed in 1838, called a *wuqfnama*, settled moieties of his estate on two wives, their daughters, and the descendants of the donees in each line so long as it should subsist, with cross remainders, on the extinction of either line, to the representatives of the other, with final remainders, on the extinction of both, to the heirs of the settlor. The settlor constituted himself the *Nazir* or *Mutwalee* (superintendent or trustee) of the estate during his life, and nominated A and B to act as such after his death with the consent of his wives. In 1840 the settlor died; A died in 1865; B survived. The wives and daughters of the settlor also died. The representatives of one of the settlor's daughters sued the defendant to recover a part of the estate which had been sold to him by the Civil Court, as the property of another of the daughters, on the ground that the estate on the death of that daughter passed as *wuqf* to her surviving sister: *Held* that, supposing the *wuqf* to have been validly created, the right to bring the suit belonged (according to Mahomedan law) not to the heirs or descendants of the settlor, but to the *mutwalees* jointly. On the death of one of the *mutwalees*, a successor to him should have been appointed in the first place by the settlor, and failing him by his executor, if he had appointed any; otherwise by the Court on the application of the parties beneficially interested in the estate. I. L. R. 3 Bom. 84.

36. *Quære* whether a *wuqf* could be created for the purpose merely of conferring a perpetual and inalienable estate on a particular family without any ultimate express limitation to the use of the poor or some other inextinguishable class of beneficiaries. *Ib.*

37. The principle of succession upon which one member of an order of ascetics succeeds to another is based entirely upon fellowship and personal association with that other, and a stranger, though of the same order, is excluded. I. L. R. 4 Cal. 543.

38. By his will the mohunt of an *akra* or religious —, appointed A to be the *malik* of the properties comprised in the —, and to receive the dues and pay the debts, and to do everything necessary connected therewith; and provided that, if any act was done prejudicial to any of those purposes or to any property set apart therefor, or contrary to the Hindoo practice and religion or usages, the property should vest in such disciple of his who should be competent and virtuous. A obtained probate of the will, and entered upon the properties mentioned therein: *Held* that the Court had not power under Act X of 1865 s. 234 to revoke the probate upon the ground that A had, since he took charge of the office, taken to an immoral course of conduct, and in consequence had been excluded from the community of *mohunts*. I. L. R. 6. Cal. 11.

39. The proper course to take for depriving such a person of his office would be to bring a suit under the Religious — Act, or any other suit, for a declaration that he had disqualified himself, and if in that suit a decree was obtained and duly certified to the Court which granted probate, that Court would, no doubt, direct the revocation of the probate. *Ib.*

40. Where a Hindoo widow made a gift of the family dwelling-house belonging to her with the lands and houses appertaining thereto to an idol, and appointed her sons managers, and the deed contained provisions as to the disposition of the profits arising from the lands and houses, viz., to provide accommodation for the families of the managers, and to invest the surplus in the purchase of lands in the name of the idol. A son of one of the brothers sold his share in the family property, and the purchaser sued for partition and for an account of the property: *Held* that there was a good gift of the family dwelling-house to the idol, and that the plaintiff was not entitled to any share therein. (O. J.) I. L. R. 6 Cal. 106.

See Attachment 20.
Criminal Breach of Trust 1.
Hindoo Law (Adoption) 28.
Limitation (Act IX of 1871) 37.
Prostitution 2.
Will 2.

Enhancement.

1. Where a tenure was or has become hereditary and transferable, and the rent has not been changed from the time of the Permanent Settlement, the tenants (being intermediate between proprietors and ryots) are protected from — by Act X of 1859 s. 15. (P. C.) 2 P. C. R. 92 (9 W. R. P. C. 3; 11 Moo. 433). *See* 21 W. R. 439.

2. In a suit for — where the Courts below had affirmed the genuineness of the pottah pleaded by defendant, and it was in terms a grant of the lands at a fixed rent, and the hereditary character of the tenure might be legally presumed by the evidence of long and uninterrupted enjoyment and descent from father to son: *Held* that plaintiff's right of —, if it existed at all, must depend upon the statutory powers of a purchaser at a sale for arrears of revenue put forward by them as the foundation of their right. (P. C.) 2 P. C. R. 180 (11 W. R. P. C. 10; 2 B. L. R. P. C. 23; 12 Moo. 263). *See* 2 P. C. R. 818 (13 B. L. R. 124; L. R. I. A. Sup. 181).

3. The right of — conferred on an original purchaser at

ENHANCEMENT (*continued*).

a sale for arrears of revenue, by the repealed sections of Reg. XI of 1822, cannot be exercised by his successor. (P. C.) *Ib.*

4. In a suit for — under Reg. VIII of 1793, the *onus* is on the zemindar to prove that a dependant talookdar is liable to —, the nature and extent of proof varying according as the tenure falls within s. 49 or s. 51. To bring a talook within s. 51, it is sufficient to show that the tenure existed and was capable of being registered at the date of the Decennial Settlement.—(P. C.) 2 P. C. R. 293 (13 W. R. P. C. 11; 13 Moo. 248; 4 B. L. R. P. C. 16).

5. Where, in a suit for enhanced rent after notice, it appeared that a howaladaree amulnamah had been granted at defendant's request, without any rent for the first year, at varying rates less than a certain rate up to 1264, and at that certain rate afterwards: *Held* that the rent was not liable to — beyond that certain rate. (P. C.) 2 P. C. R. 794 (19 W. R. 141).

5*a*. A suit to enhance is very different from a suit to recover arrears of rent at the rates originally fixed, and is founded entirely upon different principles. To a suit for — it will be no bar to plead that all arrears according to the original rate have been paid. (P. C.) *Ib.* *See* 9 *post.*

6. In a suit for enhanced rent where liability to — is disputed, a declaratory decree for — may be given without proof of notice, and such decree is sufficient to rebut the presumption referred to in Act X of 1859 s. 16. (P. C.) 2 P. C. R. 798 (19 W. R. 175; 12 B. L. R. 53). *See also* 22 W. R. 482. *See* 9 *post.*

7. A claim to exemption from — founded on the tenure being a *kudeemee* ryottee one, does not fall within Reg. VIII of 1793 s. 51, which relates to dependent talookdars. (P. C.) 2 P. C. R. 836 (19 W. R. 353; 12 B. L. R. 229).

8. An auction-purchaser of a zemindaree at an execution-sale in a suit by the mortgagee, has no higher title to enhance the rent of the ryots than a purchaser from the former zemindar. (P. C.) *Ib.*

9. Dependent talooks created before the Decennial Settlement, when protected from — by Reg. VIII of 1793 s. 51, and when by Act X of 1859 s. 15. (P. C.) 3 P. C. R. 116 (23 W. R. 352; 15 B. L. R. 120; L. R. 2 I. A. 193).

10. In this case it was held that the plaintiff had failed to sustain the burden cast upon him by Act VIII of 1869 (Bengal) s. 4 of proving that the land, of which he sought to enhance the rent, had not been held at a fixed rent from the time of the permanent settlement. (P. C.) 3 P. C. R. 547.

11. In this suit for enhanced rent, plaintiff started upon the foundation of an enhanced rent which had been found by a recent decree, and which established a *primâ facie* case of the rent properly payable by the defendant; and the Subordinate Judge decreed in favor of plaintiff the payment of one year's rent. The High Court reversed his decree peremptorily, dismissing from its consideration the whole of plaintiff's evidence. The Privy Council held that the decree of the High Court could not stand, there being no sufficient reason for disturbing the judgment of the Subordinate Judge. (P.C.) 3 P. C. R. 651.

12. A *tullubi-bromotur* is a permanent intermediate tenure, entitling the holder to a notice of — under Reg. VIII of 1793 s. 51. 25 W. R. 200 (I. L. R. 2 Cal. 125).

13. An ijaradar is entitled to enhance the rent of ryots holding under him when there is no condition or stipulation in his lease precluding him from so doing. I. L. R. 2 Cal. 474. *See* I. L. R. 3 Bom. 23.

14. One of several joint proprietors may, without making his joint proprietors parties, bring a suit for — of rent against ryots holding under him, from whom he has been in the habit of realizing separate rents. *Ib.*

But one co-sharer cannot enhance the rent of his share when such an — is inconsistent with the continuance of the lease of the entire tenure. (F. B.) I. L. R. 4 Cal. 96; *Ib.* 5 Cal. 574.

This last ruling was held not applicable where the *butwarra* proceedings did effect such a complete change in the nature of the original tenure as to create three new tenancies in the place of the old one. I. L. R. 5 Cal. 273.

One co-sharer is not competent to issue a proper notice of — without the consent of the other co-sharers previously obtained, though the rent has been paid to each co-sharer separately. I. L. R. 6 Cal. 149.

Under the above F. B. ruling, he must first establish his right to a separate contract to recover his rent separately on his individual share. *Ib.*

15. — of punishment. *See* Punishment 1.

16. A rent in kind (*bhaolee*) which, though it varies yearly in amount with the varying amount of the yearly produce, is fixed as to the proportion it is to bear to such produce, is a fixed rent within the meaning of Act X of 1859 s. 3 (corresponding with Act XVIII of 1873 s. 5). A tenant therefore in a permanently settled district, holding his land at such a rent, is entitled to claim the presumption of law declared in Act X of 1859 s. 4 (corresponding with Act XVIII of 1873 s. 6) if he proves that, for a period of 20 years next before the commencement of the suit to enhance his rent, he has paid the same proportion to the produce of his holding. (F. B.) I. L. R. 1 All. 301.

17. In a suit for the recovery of rent at an enhanced rate, brought by two of four brothers, joint and undivided owners of the tenure, the other two brothers, on an objection taken by the defendant that they ought to have been parties to the suit, presented a petition signifying their assent to the institution of the suit, and were thereupon treated as parties to the suit. This application, however, was made after the period of limitation prescribed for such a suit had expired: *Held* by Markby J. that, although the rights of such added parties were absolutely barred, yet the Court could proceed to adjudicate upon and declare the rights of the remaining plaintiffs who had originally filed the suit, and that, as the claim for rent was indivisible, the decree in their favor should be for the whole amount. *Held* by Prinsep J. that the objection as to the defect of parties after the case had passed through two Courts, is not one affecting the merits of the case so as to be a ground of special appeal. I. L. R. 3 Cal. 26.

18. In a suit by the present defendant against the present plaintiff for — of rent, the Court of first instance and the High Court gave plaintiff decrees for enhanced rent. The Privy Council, in the year 1873, reversed those decrees, and held that the rent could not be enhanced. Before the date of the Privy Council judgment, the present defendant obtained several other judgments for enhanced rent against the present plaintiff. No application was made by him for review of those judgments, but in 1875 he brought this suit to recover the difference between the amount of enhanced rent recovered and the fixed rent which he was bound to pay: *Held* that the decrees for enhanced rent were superseded, and that such a suit as the present one would lie. (F. B.) I. L. R. 3 Cal. 30. *See also* I. L. R. 5 Cal. 589.

19. A lease from generation to generation gave the boundaries of the land leased, estimated the area thereof, and fixed a certain rent per beegah. It contained a condition that, if on measurement the actual quantity of land should turn out to be either more or less than the estimated area, the rent should be increased or decreased in proportion at the same rate per beegah. In a suit for — of rent on the ground that the land leased contained more than the estimated number of beegahs, the lease being one which did not specify the period of the engagement: *Held* that notice of — was necessary under Act VIII of 1869 (Bengal) s. 14. I. L. R. 3 Cal. 271. *But see* 28 *post.*

20. In a previous suit the present plaintiff had sued the defendant for the amount of rent originally fixed in the lease, and the defendant claimed in that suit an abatement of rent in accordance with the terms of the lease, and a measurement was thereupon made which showed that the quantity of land held by the defendant was in excess of that named in the lease; that suit was decided in favor of the plaintiff for the rent claimed: *Held* that the measurement adopted by the Court in the former suit was not, as regards the amount of the excess, binding upon the defendant; and that, even if it were, the fact of such measurement would be no sufficient notice of — to the defendant. *Ib.*

21. One of several tenants in common, joint tenants, or co-parceners (unless he is acting by consent of the others as manager of an estate) is not at liberty to enhance rent or eject tenants at his pleasure. In a suit brought by one of two joint *khots* to recover enhanced rent from a tenant, the notice of — given to the tenant having been signed by the plaintiff alone, and not concurred in by the other joint *khot*: *Held* that the notice was insufficient to render the tenant liable for the increased rent, and that the plaintiff was not entitled to recover. I. L. R. 3 Bom. 23.

ENHANCEMENT (*continued*).

22. Where a tenure is owned by a joint Hindoo family, it is sufficient service of notice of — under Act VIII of 1869 (Bengal) s. 14, if any one of the co-sharers is served with the notice. I. L. R. 4 Cal. 592.

23. In a suit in which a decree is given for arrears of rent at an enhanced rate, interest is to be allowed not only from the date of the decree, but from the time the rent became due. I. L. R. 4 Cal. 594.

24. The right of an auction-purchaser under Reg. XLIV of 1793 s. 5 is limited to raising the rent of a talook created by the defaulter to what is demandable from it according to the pergunnah rates prevailing either at the time when the talook is created, or at the time when the auction-purchase takes place; and he cannot demand any higher rent even if, at any subsequent time, such higher rent be in accordance with the prevailing current rate. I. L. R. 4 Cal. 612.

25. An *enamdar's* power to enhance the rent of *meerasee* tenants is limited. He cannot demand more rent than what is fair and equitable according to the custom of the country. I. L. R. 3 Bom. 141.

26. The defendant executed to the plaintiff in 1847 a *mulgeni kuboolent* (corresponding to a lease at a fixed rental) agreeing to pay to the plaintiff Rs. 150 annually. At the date of the execution of the *mulgeni*, the Government assessment was Rs. 56-8-0, but in 1872 it was enhanced to Rs. 129-8-0, and a local fund cess of Rs. 4-9-0 imposed in addition. The plaintiff sued the defendant to recover from him the enhanced assessment and the cess: *Held* that the plaintiff was not entitled to recover, inasmuch as the defendant's liability was fixed by the terms of the *mulgeni*, which was binding, although it had been executed by both parties in the belief that the Government assessment would not be increased. I. L. R 3 Bom. 154.

But the plaintiff is subject to no such restriction in respect to the land subsequently acquired by encroachment, and the defendant is liable for the local cess. I. L. R. 4 Bom. 473.

27. The procedure prescribed in Act VIII of 1869 (Bengal) applies to claims of — by a purchaser at a revenue sale; and the rights of any such purchaser are, therefore, subject to all the modifications contained in ss. 4 and 17, which form a presumption in favor of tenures of all classes held at an unchanged rent for a period of 20 years before the commencement of a suit, that such holdings have run on at the same rate from the time of the Permanent Settlement. I. L. R. 4 Cal. 793.

28. Where a pottah in its terms expressly stipulates for an increase of rental according as the lands are brought under cultivation and a measurement is taken, a landlord is entitled to recover such increased rent as is agreed upon in the pottah without serving on the tenants any notice under Act VIII of 1869 (Bengal) s. 14. (F. B.) I. L. R. 4 Cal. 941. *Overruling* 19 *ante*.

29. In every part of India the Government or its alienee is debarred, if not by law (as in Bengal) yet by the custom of the country, from enhancing the assessment of permanent tenants beyond a certain limit. What that limit is must be determined by the circumstances of each case. In a suit by an *enamdar*, holding under a grant from Scindia made in 1793, against his permanent tenant for an enhanced rent, the Court, in the absence of law or contract to the contrary, affirmed the plaintiff's right to enhance the assessment to the extent to which, according to the old custom of the country, Scindia would have been entitled to enhance it; and upon a virtual admission of the defendant, allowed — to the extent of one-half the produce. I. L. R. 3 Bom. 348.

30. When the lands, the rent of which is sought to be enhanced, consist of more than one plot, it is not sufficient for the landlord to serve the tenant with a notice of — specifying all the three grounds of — mentioned in Act VIII of 1869 (Bengal) s. 18. Such notice should specify the particular ground or grounds on which each separate plot is alleged to be liable to —. *Semble* this would not be so if the same ground or grounds applied to every plot the rent of which is sought to be enhanced. I. L. R. 5 Cal. 53.

31. If, in a suit for —, the plaintiff fails to prove that he has served the defendant with a proper notice, the Court is not bound to make a declaratory decree, but whether it shall do so or not lies entirely in its discretion. *Ib.*

32. In a suit for — of rent, bare proof that the productive powers of the land in suit have been increased by the agency or at the expense of the defendant or his ancestor, is not sufficient to exempt the defendant altogether from —. In such a case, where the value of similar lands in the same locality, but not sharing the special advantages resulting from works or improvements erected or effected by or at the expense of the defendant or his ancestor, has been increased by natural causes, it must be assumed that the lands of the defendant owe their increased value to that extent to natural causes, and are to that extent liable to —. I. L. R. 5 Cal. 56.

33. More than 20 years before the institution of a suit for the — of the rent of a share in a dependent talook, the zemindaree under which the talook was held was partitioned under a *butwarra* among three zemindars. A ten-anna share was allotted to one (the present plaintiff), a four-anna share to another, and a two-anna share to a third. The talookdars continued to hold the entire property, and paid the rent apportioned by law severally to each of the parties entitled. In 1861 the owner of the two-anna share obtained a decree against the talookdars for — of the rent of his share. In the present suit against the same talookdars, the defendants contended that the rent of their talook had not been changed for a period of more than 20 years before suit: *Held* that the "talook" which was intended by Act VIII of 1869 (Bengal) s. 17, was the original talook; and that if the defendants could show that the rent of that talook had remained unchanged, either in its original entirety, or apportioned as it had been under the *butwarra*, they would be entitled to the benefit of the section; but that the decree in the suit of 1861 had the effect of enhancing the rent payable for the whole talook, and that the plaintiff could avail herself of that decree, although she was not a party to it. I. L. R. 5 Cal. 273.

34. The word "modify" in Act X of 1872 s. 18 cl. 2 does not include the power to *enhance* a sentence. Consequently, when an Assistant Sessions Judge passes a sentence of more than three years' imprisonment, the Sessions Judge cannot enhance it. (Cr.) I. L. R. 4 Bom. 239.

35. N brought a suit against P for — of rent. P's defence was, (1) that no notice of — had been given; (2) that the rent was not enhanceable, as he and his predecessors in title had held it at a fixed rent from the date of the Permanent Settlement. The suit was dismissed on the ground that no notice had been given; but the Moonsiff stated in his judgment, that he considered the rent enhanceable, because he did not believe in the genuineness of the documentary evidence produced by P. The decree merely ordered that the suit should be dismissed, the portion of the judgment as to the enhanceability of the rent not being embodied in the decree. P, therefore, had no right of appeal against that portion of the judgment. In a subsequent suit by N, against P, for — of rent of the same tenure: *Held* that P was precluded, by the decision in the former suit, from denying that the rent of the tenure was enhanceable, although the decision on that point was not embodied in the decree. (F. B.) I. L. R. 6 Cal. 319.

See Churs 22.
Declaratory Decree 8.
Ghatwals 3, 4.
Hindoo Widow.
Kuboolent 8.
Limitation 7, 29.
Mokurruree 5, 6.
Reclaimed Land 1.
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Equitable Mortgage.

See Bill of Exchange 1.
Mortgage 43.
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Equitable Rights.

See Attachment 21.
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Estoppel 10.
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Hindoo Law (Adoption) 36.
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See Bond 2.
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Mistake.
Plaint 5.
Practice (Review) 6, 8, 9, 16.
Registration 8.
Sale (in Execution of Decree) 2, 8.
Will 54.

Escape.

1. Liability of Nazir for — of judgment-debtor from arrest. I. L. R. 4 Bom. 65.

Escheat.

1. There is no authority upon which the power of taking by — can be attributed to the zemindar. The principles of English feudal law are clearly inapplicable to a Hindoo zemindar. On the other hand, it is clear that, if the zemindar has not such a right, the general right of the Crown subsists and must prevail. (P. C.) 3 P. C. R. 257 (25 W. R. 239; L. R. 3 I. A. 92; I. L. R. 1 Cal. 391).

2. There is nothing in the nature of a mokurruree under-tenure, which might be sold or otherwise alienated, independently of the parent estate, to prevent the Crown from taking it subject to the rent reserved upon it by the zemindar. (P. C.) *Ib.*

Estoppel.

1. A pleading by two defendants against the suit of another plaintiff never can amount to an —. (P. C.) 2 P. C. R. 386 (15 W. R. P. C. 14; 13 Moo. 551).

2. The rule laid down in the *Duchess of Kingston's* case on the law of — is not technical or peculiar to the law of England, but is perfectly consistent with Act VIII of 1859 s. 2. (P. C.) 2 P. C. R. 404 (15 W. R. P. C. 30; 7 B. L. R. 673). *See also* (F. B.) 19 W. R. 322.

3. Accordingly, an incidental finding as to the validity of an *ikrarnamah* in a summary suit for rent was held to be no bar to a suit for redemption in which the same *ikrarnamah* was set up. (P. C.) *Ib.*

4. A representation of the fact of an adoption erroneously believed to be valid in law, is not misrepresentation, so as to estop the party from setting up the true facts of the case. (P. C.) 2 P. C. R. 752 (19 W. R. 12; 11 B. L. R. 391; L. R. I. A. Sup. 131).

5. An — must be mutual, and both parties must be bound by the finding in the decree. (P. C.) 2 P. C. R. 758 (19 W. R. 114).

6. A father's heirs after his death would be as much bound by his misrepresentations as he would have been during his life. (P. C.) 2 P. C. R. 809 (19 W. R. 292).

7. A man who has represented to an intending purchaser that he has not a security (a mortgage) in the property to be sold, and induced him under that belief to buy, cannot as against that purchaser subsequently attempt to put his security in force. (P. C.) 2 P. C. R. 917 (21 W. R. 21; L. R. 1 I. A. 144).

8. Where a material issue has been tried and determined between the same parties in a proper suit, and in a competent Court, as to the *status* of one of them in relation to the other, it cannot be again tried in another suit between them. (P. C.) 3 P. C. R. 213 (25 W. R. 1; L. R. 2 I. A. 283; I. L. R. 1 Cal. 144).

Concurrency of jurisdiction is not necessary to raise the —. I. L. R. 5 Cal. 832. *See also* 3 P. C. R. 540 (L. R. 5 I. A. 149; I. L. R. 4 Cal. 190); (F. B.) I. L. R. 6 Cal. 319.

9. Where a suit was brought for a year's rent, and the tenant claimed abatement, and a judgment was obtained which determined the amount to be abated on materials which would be applicable to one year as well as to another: *Held* that the question of abatement of rent was determined between the parties not only for the one year of which the rent was in suit, but for all future years. I. L. R. 1 Cal. 202 (24 W. R. 403). *But see* I. L. R. 3 Cal. 271. *See also* I. L. R. 3 Cal. 383.

10. Plaintiff sued in 1875 to recover possession of immoveable property which defendant had obtained in 1873, in execution of an *ex-parte* decree dated 8th June 1861. That decree was founded on a deed purporting to be a deed of conditional sale dated 24th December 1853, executed by plaintiff in favor of defendant. Plaintiff alleged that the deed was executed in order to protect the property against the claims of plaintiff's son, and plaintiff sought to set it aside on account of defendant's breach of an agreement dated 16th January 1856 whereby defendant stipulated that plaintiff's possession should not be disturbed. Defendant, *inter alia*, pleaded —, and the bar of limitation, against plaintiff's suit: *Held* that the suit was not barred by limitation as plaintiff's cause of action only arose when defendant first practically disavowed the trust by seeking more than nominal execution of decree and (following ruling 1 *ante*) that plaintiff is not estopped from showing the real truth of the transaction between plaintiff and defendant, and from obtaining relief through the Court against defendant's breach of good faith, because of plaintiff's attempt to hinder or defeat the possible claim of a third party, the maxim *in pari delicto potior est conditio possidentis* not being applicable without qualification to India where justice, equity, and good conscience required no more than that the party should be precluded from contradicting to the prejudice of another an instrument pretending to the solemnity of a deed when the parties claiming under it, or their representatives, have been induced to alter their position on the faith of such instrument. I. L. R. 1 All. 408.

11. A claimed certain property from B, the daughter of C, on the ground that, on the death of C, it had descended to D as the heir of C, and produced a *kabala* containing a recital that, on the death of C who had died childless, it had descended to D: *Held* that A was not estopped from proving that C had left a son E who survived him, and that D was entitled to the property as E's heir, and that D's heir could give the title to such property. I. L. R. 4 Cal. 397.

12. A brought a suit against B, to have it declared that B possessed no right of way over his lands. This suit was dismissed, and B obtained a decree establishing his right. Previous to the institution of this suit, A had mortgaged the same lands to C, who, after the suit, caused the lands to be sold under his mortgage, and became the purchaser at the auction-sale. In a suit by C against B, to have it declared that no such right of way existed over the lands: *Held* that C was not estopped by the previous decision

ESTOPPEL (*continued*).

against A, his mortgagor, from again raising the question of the validity of the right of way over the said lands. I. L. R. 4 Cal. 692.

13. In a suit for rent brought against an *ijaradar* by a person claiming to be the *durputneedar* of certain property, the defendant resisted the claim on the ground that another person was the real owner of the *durputnee*, and this person was made a co-defendant and intervened for the purpose of supporting his title to the rent. It appeared that in 1259 A purchased the *durputnee*, and sold it in 1265 to his wife and son C. Afterwards A successfully resisted a suit for rent brought against him by the present plaintiff as superior landlord on the ground that he had parted with his interest in the estate to B and C. Plaintiff then sued B and C for the rent and obtained a decree under which the *durputnee* was sold to him. He now sued the ijaradar. The intervening defendant contended that A had mortgaged the property to him, and that such proceedings had been taken on the mortgage that he was entitled in A's right to the rent of the property as the owner of it: *Held* (with reference to Act I of 1872 s. 115) that the intervening defendant could take no better title than A himself; and that as A had directly induced the plaintiff to believe that he had sold the property absolutely to B and C, and had led him to bring a suit against them for the rent, and under the decree obtained in that suit to purchase their interest in the property, the intervening defendant could not set up a claim to the rent in the present suit as against the plaintiff. I. L. R. 4 Cal. 783.

14. Where the parties to a suit have by mutual agreement made certain terms and informed the Court of them, and the Court has sanctioned the arrangement and made an order in conformity with it, and the agreement has been acted upon, neither party is at liberty to resile from it. The question whether such an agreement does or does not violate the rule that a Court cannot add to its decree, becomes under the circumstances one which the Court will not enter into; the party who seeks to raise such question being estopped by his own conduct, and the action of the Court taken thereunder. I. L. R. 5 Cal. 27.

15. Estoppels in the sense in which that term is used in English legal phraseology are matters of infinite variety, and are by no means confined to the subjects which are dealt with in Chap. VIII of Act I of 1872. (O. J. Ap.) I. L. R. 5 Cal. 669.

16. A man may be estopped not only from giving particular evidence, but from doing any act or relying upon any particular argument or contention, which the rules of equity and good conscience prevent him from using as against his opponent. (O. J. Ap.) *Ib.*

17. D who was the natural brother of H, but had been adopted into another family, on the one part, and G, on the other part, referred to arbitration a dispute between them concerning the succession to the estate of S, the father of D and H. H, having been born deaf and dumb, was under Hindoo law incapable of inheriting his father's estate, and he was not a party to the arbitration-proceedings. The award, to which G, after it was made, expressed his assent in writing, declared that H was the heir to his father's estate: *Held*, in a suit by H against G for possession of a portion of his father's estate, that the plaintiff, not being a party to the award, was not bound thereby, and, not being bound thereby, could not claim to take any advantage therefrom; that the award could not confer on him a right which the law disallowed; that the assent of the defendant to the award could not convey to the plaintiff a right of inheritance which did not devolve on him by law; that it could not be contended that the defendant had made a gift of the property to the plaintiff, inasmuch as it had been adjudged by the award that the property did not belong to the defendant; that the defendant by his assent to the award was not estopped from questioning the plaintiff's right of inheritance by the provisions of Act I of 1872 s. 115; and that, under these circumstances, the plaintiff could not succeed in his suit. (F. B.) I. L. R. 2 All. 809.

18. Act X of 1877 s. 13 expl. 2 was meant to apply to a case where the defendant has a defence which, if he had so pleased, he might, and ought to, have brought forward; but, as he did not bring it forward, the suit has been decreed against him. Under such circumstances the defendant is as much bound by the adverse decree as if he had set up the defence, and he is equally estopped from setting up that defence in any future suit under similar circumstances. The explanation was never intended to enable a party to treat a point of law as having been decided in his favor in a former suit, which was in fact not so decided, and which it was not necessary, for the purposes of the suit, to decide at all. I. L. R. 5 Cal. 923.

19. In an ejectment suit, the defendants from whom the plaintiff alleged that he had purchased the land from which he sought to eject them, and who had before suit by parol disclaimed the plaintiff's title, set up in their written statement an adverse title in themselves. The Lower Court found the plaintiff's allegation to be true: *Held* that the defendants were estopped from contending on appeal that they were occupancy-ryots, and therefore not liable to be ejected; and that by their own conduct they had forfeited the rights which they claimed. I. L. R. 6 Cal. 55.

See Attached Property 1.
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Evidence.

1. Rejection of —. *See* High Court 26; Privy Council 3, 28.

2. The ordinary legal and reasonable presumptions of fact must not be lost sight of, nor an entire history thrown aside, because the — or some of the — was incredible or untrustworthy. (P. C.) 2 P. C. R. 493 (17 W. R. 1; 14 Moo. 346).

3. It is always dangerous, and more especially so in the Mofussil Courts in India, to allow parties to make a new case and to call fresh — upon an issue on which they have failed upon the — originally adduced in support of it. (P. C.) 3 P. C. R. 304 (26 W. R. 55; L. R. 3 I. A. 259).

4. In a case of conflicting — of witnesses who do not commend themselves by the manner in which they give their —, it is a safe rule to look to the conduct of the parties. (P.C.) *Ib.*

5. If a Court intends to call for fresh —, it ought to record its reasons for so doing. (P. C.) *Ib.*

6. An alleged oral agreement between C and M as to obtaining loans, if necessary, from the plaintiffs, and giving them a first charge on the season's indigo in respect of such loans, was held to be in direct contravention and defeasance of a mortgage deed to A and B, and therefore inadmissible in — under Act I of 1872 s. 92. (O. J. Ap.) I. L. R. 2 Cal. 58. *See also* (as to oral contract) I. L. R. 2 Bom. 547.

Evidence (continued).

7. So also an oral agreement, alleged by defendant, to have been executed contemporaneously, by which a deed of sale was to be merely a security for the payment of a certain sum of money by the defendant to the vendee, a large portion of the sum so secured having already been paid to the vendee. I. L. R. 1 Bom. 333.

8. Act I of 1872 s. 92 prevents the admission of oral — for the purpose of contradicting or varying the terms of a contract, but does not prevent a party to a contract from showing that there was no consideration, or that the consideration was different from that described in the contract. Where, therefore, a deed of sale described the consideration to be Rs. 100 in ready cash received, but the — showed that the consideration was an old bond for Rs. 63-12-0 and Rs. 36-4-0 in cash: *Held* that there was no real variance between the statement in the deed and the — as to consideration, having regard to the fact that it is customary in India, when a bond is given wholly or partially in consideration of an existing debt, to describe the consideration as being "ready money received." I. L. R. 3 Bom. 159.

9. — cannot be admitted to prove a contemporaneous oral stipulation varying, adding to, or subtracting from the terms of a written contract. — of the acts and conduct of the parties to a written contract is not admissible if tendered solely in support of an oral stipulation varying its terms. I. L. R. 5 Cal. 300. *Dissented from* I. L. R. 4 Bom. 594; *and see* (O. J. Ap.) I. L. R. 6 Cal. 328.

10. A party, whether plaintiff or defendant, who sets up a contemporaneous oral agreement as showing that an apparent sale was really a mortgage, should not be permitted to start his case by offering direct parol — of such oral agreement; but if it appear clearly and unmistakeably, from the conduct of the parties, that the transaction has been treated by them as a mortgage, the Court will give effect to it as a mortgage, and not as a sale; and, therefore, if it be necessary to ascertain what were the terms of the mortgage, the Court will for that purpose allow parol — to be given of the original oral agreement. I. L. R. Bom. 594.

11. Although parol — will not be admitted to prove directly that simultaneously with the execution of a bill of sale there was an oral agreement by way of defeasance, yet the Court will look to the subsequent conduct of the parties, and if it clearly appears from such conduct that the apparent vendee treated the transaction as one of mortgage, the Court will give effect to it as a mortgage and nothing more. *Ib.*

12. Importance of — of the conduct of parties to a written contract pointed out. In many cases it may amount to an estoppel. In such a case, — of conduct would be strictly admissible under Act I of 1872 s. 115. *Ib.*

13. In a case of disputed succession involving a question of pedigree, it appeared that the plaintiffs had undoubtedly admitted the rights of the defendants immediately after the opening of the succession, and had acted upon that admission by permitting the names of the defendants to be registered in the Collector's office, and by carrying on suits with them in the joint names of all. In short, they appear not to have in any respect disputed the defendant's title until about eleven years after the opening of the succession: *Held*, in a recent case not yet reported, that this course of conduct, although it did not amount to an estoppel in point of law, threw upon the plaintiffs a heavy burden of proof, which, in their Lordships' opinion, the plaintiffs had not sustained. (P. C.) *Ajrawal Singh* v. *Fowjdar Singh*, 19 November 1880.

See **Account 2.**
Ancestral Property 5.
Custom 9.
Damages 1.
Discharge 2, 4.
Endowment 24, 28.
Enhancement 11.
Estoppel.
Evidence (Documentary).
Ex-Parte 4.
Forgery 1.
See **Gambling 3, 4.**
Gift 1.
Guardian and Minor 10.
High Court 3, 14, 26, 33.
Hindoo Law (Adoption) 5, 11, 13, 25.
Issues 4.
Judgment 1, 2, 3.
Magistrate 1.
Meerasee 7.
Mortgage 21*b*, 42.
Negligence 1.
Patent 3.
Possession 1, 3.
Practice (Review) 6, 9, 14.
Practice (Suit) 10.
Privy Council 1, 8, 14.
Promissory Note 2.
Purdah Woman 1, 2, 3, 5.
Res Judicata 11.
Security 8.
Vendor and Purchaser 1.

Evidence (Admissions and Statements).

1. An admission of a fact on the pleadings by implication is not an admission for any other purpose than that of the particular issue, and is not tantamount to proof of the fact. (P. C.) 3 P. C. R. 94 (23 W. R. 214; 15 B. L. R. 10; L. R. 2 I. A. 113).

2. Admissions must be taken as a whole. *See* Endowment 20.

3. A statement made by a prisoner in the nature of a confession, which was subsequently reduced into writing by the Inspector in whose custody the prisoner was, and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police who received and attested it as Magistrate and Justice of the Peace, was held by the Court of Review to be inadmissible in evidence under Act I of 1872 s. 25. S. 26 is not to be read as qualifying the plain meaning of s. 25. In considering s. 25, the term "Police officer" is not to be read in a technical sense, but in its more comprehensive and popular meaning. (O. J. Cr.) I. L. R. 1 Cal. 207.

4. A confession recorded under Act X of 1872 s. 122, to be admissible in evidence, must not only bear a memorandum that the Magistrate believed it to have been voluntarily made, but also a certificate, under s. 346, that it was taken in the Magistrate's presence and hearing, and contains accurately the whole of the statement made by the accused person. (Cr.) I. L. R. 1 Bom. 219.

An accused person who refuses to sign such statement commits no offence under s. 180 Penal Code. (Cr.) I. L. R. 4 Bom. 15. *See* 10 *post.*

5. No oral evidence can be received to prove the fact of the confession, if the confession itself be inadmissible. (Cr.) *Ib.* *But see* I. L. R. 2 Mad. 5.

6. A conviction based solely on the evidence (confession) of a co-prisoner, is bad in law. (Cr.) I. L. R. 1 Mad. 163. *See also* I. L. R. 1 All. 664, 675. *See post* 7, 9.

7. Act I of 1872 s. 25 does not preclude one accused person from proving a confession made to a Police officer by another accused person tried jointly with him. Such a confession is not to be received or treated as evidence against the person making it, but simply as evidence on behalf of the other. (O. J. Cr.) I. L. R. 2 Bom. 61. *See ante* 6 *and post* 9.

8. The attestation required by Act X of 1872 s. 346 is unnecessary when a confession is made in Court to the officer trying the case at the time of trial. (Cr.) I. L. R. 3 Cal. 756.

9. Where more persons than one are jointly tried for the same offence, the confession made by one of them, if admissible in evidence at all, should be taken into consideration against all the accused, and not against the person alone who made it. The circumstances which will render a confession objected to under Act I of 1872 ss. 24 to 26 admis-

EVIDENCE (ADMISSIONS AND STATEMENTS) (*continued*).

sible in evidence, discussed. I. L. R. 3 Bom. 12. *See* 6, 7 *ante*.

10. When the confession of a prisoner under Act X of 1872 s. 122 was not taken in the manner provided by s. 346, and was, therefore, defective: *Held*, that the evidence of the Recording Officer, that such confession was actually made, was inadmissible to remedy the defect. (Cr.) I. L. R. 4 Cal. 696. *See* 4 *ante*.

11. Where the confession of a person being tried jointly with other persons did not implicate him to the same extent as it implicated such other persons, and was not sufficient of itself to justify his conviction: *Held* that such confession could not be taken into consideration, under Act I of 1872 s. 30, against such other persons. (Cr.) I. L. R. 2 All. 444. *See also* I. L. R. 2 All. 646.

12. A prisoner, charged together with others with being a member of an unlawful assembly, made a statement before the Committing Magistrate implicating his fellow prisoners and another person. He subsequently withdrew this statement, and made another, in which he endeavoured to exculpate himself: *Held* that this statement was not evidence against the other prisoners under Act I of 1872 s. 30. It was not a confession, nor did it amount to any admission by the prisoner that he was guilty in any degree of the offence charged; but it was simply an endeavour on his part to explain his own presence on the occasion in such a manner as to exculpate himself, and any mention made by him in such a statement of other persons having been engaged in the riot, was altogether irrelevant, and not evidence against them. (Cr.) I. L. R. 6 Cal. 280.

See Accomplice 1, 2.
Attorney and Client 3, 4.
Divorce 1.
Evidence (Corroborative) 1, 2, 3, 4, 5.
" (Documentary) 14.
Hoondee 3.
Limitation (Act IX of 1871) 48.
Magistrate 3, 4.
Partnership 12.
Registration 26.
Will 33.

Evidence (Corroborative).

1. A conviction based on the testimony of approvers, uncorroborated as to the identity of the accused person, cannot be sustained; and confessions of co-prisoners, implicating him, cannot be accepted as sufficient corroboration of such testimony. (Cr.) I. L. R. 1 Bom. 475.

2. Act I of 1872 s. 133 in unmistakeable terms lays it down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice; and to hold that corroboration is necessary is to refuse to give effect to this provision. (Cr.) I. L. R. 1 Mad. 394.

3. The rule in s. 114 of the same Act coincides with the rule observed in England that, though the evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the jury or the Court credits the evidence, a conviction proceeding upon it is not illegal. (Cr.) *Ib.*

4. A conviction of a person who is being tried together with other persons for the same offence cannot proceed merely on an uncorroborated statement in the confession of one of such other persons. (Cr.) I. L. R. 1 All. 664, 675.

5. Under Act I of 1872 s. 30, the confession of a prisoner affecting himself and another person charged with the same offence is, when duly proved, admissible as evidence against both; but such second person cannot, when it is uncorroborated as against him, be legally convicted on it. The word "Court" in the section means not only the Judge in a trial by jury, but both Judge and jury. Discussion as to the manner of dealing with such evidence. (F. B. Cr.) I. L. R. 4 Cal. 483.

See Banker 1.

Evidence (Documentary).

1. The admission of — subsequently to the filing of the plaint is not a ground of appeal, when it is received, under Act VIII of 1859 s. 39, with the sanction of the Court. (P. C.) 2 P. C. R. 253 (12 W. R. P. C. 32; 3 B. L. R. P. C. 34; 13 Moo. 77).

2. Laxity prevailing in the Indian Courts in admitting documents, remarked upon. (P. C.) 2 P. C. R. 603 (17 W. R. 553; 12 B. L. R. 396; 14 Moo. 570; L. R. I. A. Sup. 1). *See* 25 W. R. 554.

3. Where a copy of a deed is tendered as evidence, and the party tendering it fails to comply with the conditions required to make the copy statutory proof of the deed, he is at liberty to give other secondary evidence of the contents of the deed, if the non-production of the original has been duly accounted for. (P. C.) 3 P. C. R. 87 (23 W. R. 208; 15 B. L. R. 67; L. R. 2 I. A. 87).

4. In a suit to recover moneys unaccounted for, where defendants plead payments endorsed on documents, and the endorsements purport to have been signed by the plaintiffs, the formal and regular method of proof is to call on plaintiffs to admit or deny their signature, and then to call upon witnesses to state whether they saw plaintiffs sign or could speak to the handwriting or generally to what took place. (P. C.) 3 P. C. R. 132 (23 W. R. 390).

5. Native books. *See* Privy Council 4.

6. Account books containing entries not made by, nor at the dictation of, a person who had a personal knowledge of the truth of the facts stated, if regularly kept in course of business, are admissible as evidence under Act I of 1872 s. 34, and *semble* under s. 32 cl. 2. (Cr.) I. L. R. 1 Bom. 610.

Only such books as are entered up as transactions take place, can be considered as books regularly kept in the course of business within s. 34. I. L. R. 4 Bom. 576.

A was employed by B, at intervals of a week or fortnight, to write up B's account-books, B furnishing him with the necessary information, either orally or from loose memoranda: *Held* that the entries so made could not be given in evidence to contradict A under s. 145. The statements were really made not by A but by B, under whose instructions A had written them. (O. J.) *Ib.*

7. Rule as to old documents. *See* Mokurruree 6; 12 *post*.

8. A *jummabundee* prepared by a Deputy-Collector while engaged in the settlement of land under Reg. VII of 1822 is a "public document" within the meaning of Act I of 1872 s. 74. It is not necessary to show that, at the time when such document was prepared, a ryot affected by its provisions was a consenting party to the terms therein specified. I. L. R. 4 Cal. 79.

9. Where an unregistered deed of partition did not exclude secondary evidence of the partition of certain family property, and yet affected to dispose of three houses by way of partition made on the day of its execution, secondary evidence of its contents was held inadmissible under Act I of 1872 s. 91. I. L. R. 2 Bom. 635.

10. The document called a *Sodi Razinama* (whereby a party relinquishes his right of occupancy of land in his possession to his landlord, and requests the latter to register the land in the name of another party to whom it has been sold) is not a document of the kind mentioned in Act I of 1872 s. 91 and therefore does not exclude the Courts from basing their findings upon other evidence, should any such exist. I. L. R. 2 Mad. 117.

11. A map prepared by an officer of Government, while in charge of a khas mehal, Government being at the time in possession of the mehal merely as a private proprietor, is not a map purporting to have been made under the authority of Government with the meaning of Act I of 1872 s. 83, the accuracy of which is to be presumed, but such a map may be admitted as evidence under s. 13 of that Act. I. L. R. 5 Cal. 287.

12. No legal presumption can arise as to the genuineness of a document more than thirty years old, merely upon proof that it was produced from the records of a Court in which it had been filed at some time previous. It must be shown that the document had been so filed in order to the adjudication of some question of which the Court had cognizance, and which had come under the cognizance of such Court. I. L. R. 5 Cal. 918.

13. A Court is not bound to accept as genuine the signature on a document upwards of thirty years old, even though

EVIDENCE (DOCUMENTARY) (*continued*).

it be produced from proper custody. Before accepting such document as proof of title, the Court must satisfy itself that the person who purports to have affixed his signature to the document was a person who at the time was entitled to grant such a document. I. L. R. 6 Cal. 209.

14. A recital in a deed or other instrument is in some cases conclusive, and in all cases evidence as against the parties who make it, and it is of more or less weight or more or less conclusive against them according to circumstances. It is a statement deliberately made by those parties, which, like any other statement, is always evidence against the persons who make it. But it is no more evidence as against third persons than any other statement would be. I. L. R. 6 Cal. 268.

See Account 1.
Arbitration 14.
Enhancement 35.
Criminal Proceedings 16
Custom 17.
Damages 4.
Divorce 2.
Endowment 24.
Evidence (Oral) 1.
Hindoo Law (Adoption) 5.
Hoondee 7.
Meerasee 1.
Practice (Review) 11.
Privy Council 28.
Registration 16, 24, 26, 33, 42, 46, 47, 52.
Sale (in Execution of Decree) 44.
Stamp Duty 5, 8, 10, 11.
Survey 2.
Vendor and Purchaser 7.
Wajib-ul-urz.
Will 47.
Zanzibar 4.

Evidence (Oral).

1. Nothing is more dangerous than to allow — to be given of what written documents are alleged to contain, when there is reason to suppose that the documents themselves exist. If a letter exists, it may be found to contain something very different from that which the witness represents to be its contents. (P. C.) 3 P. C. R. 710 (L. R. 7 I. A. 8; I. L. R. 6 Cal. 218).

2. — of payment. *See* Bond 2.

3. Oral Agreement. *See* Contract 13.

See Contract, 27
Criminal Proceedings 16.
Custom 17.
Evidence 8, 10, 11.
,, (Admissions and Statements) 5.
Registration 16, 24, 42.

Evidence (Secondary).

1. The plaints and records in a number of suits upon bonds instituted by the same plaintiff against different persons were destroyed by fire. The suits were re-instituted and duplicate copies of the plaints were filed. The only evidence of the contents of the bonds, from which the plaints were prepared, consisted of a register kept by the plaintiff's gomashtas of the names of the executants of the bonds, the matter in respect of which the bonds had been given, the amounts due thereunder, and the names of the attesting witnesses. From this register the duplicate plaints had been prepared: *Held* that though the register was not — of the contents of the bonds, yet it was a document which might be referred to by a witness for the purpose of refreshing his memory, under Act I of 1872 s. 159. I. L. R. 5 Cal. 353.

2. In a case falling under Act I of 1872 s. 65 cl. (*f*) and also under cl. (*a*) or (*c*) of the same section, any — is admissible. (O. J.) I. L. R. 5 Cal. 568.

3. — of the contents of a document requiring execution, which can be shown to have been last in proper custody, and to have been lost, and which is more than thirty years old, may be admitted under Act I of 1872 s. 65 cl. (*c*) and s. 90, without proof of the execution of the original. (O. J.) I. L. R. 5 Cal. 886.

See Evidence (Documentary) 3, 9.

Excise.

1. A suit will not lie against the Government for compensation for damages sustained through the wrongful acts and defaults of — officials done in the exercise of sovereign powers. (O. J.) 24 W. R. 309 (I. L. R. 1 Cal. 11).

2. On 30th October 1877, N was granted a license for the sale of spirituous and fermented liquors by retail terminating on 31st December 1877. On 11th January 1878, such license was renewed by the Collector for a period terminating on 31st March 1878. On 14th January 1878, N's servant was convicted, under Act X of 1871 s. 62, of the illicit sale of liquors between 1st and 10th January 1878: *Held* that the renewal of N's licence was a condonation of the offence, and that the conviction was bad. *Semble* that, inasmuch as N had given no notice of his intention not to renew the license, nor had the Collector recalled it, the license remained in force, and the conviction was consequently bad under s. 32. (Cr.) I. L. R. 1 All. 630.

3. D was the holder of a similar license terminating on 31st December 1877. On 10th January 1878, his license not having been renewed by the Collector, D sold certain spirits by retail. On these facts he was convicted of the illicit sale of liquor. Subsequently to his conviction his licence was renewed: *Held* that, under such circumstances, his conviction under Act X of 1871 s. 62 was good. I. L. R. 1 All. 635.

4. A held a similar license terminating on 31st December 1877. Prior to 8th January 1878 no notice was given by A of her intention not to renew the license, nor had the license been recalled by the Collector. Between 1st and 8th January 1878, A's servants sold spirituous and fermented liquors by retail. On these facts A's servants were convicted, under Act X of 1871 s. 62, of the illicit sale of liquor: *Held* following opinion in ruling (3) *ante*, though dissenting from the principle of the decision, that the convictions were bad as A's license under s. 32 remained in force until she gave notice of her intention not to renew it, or until it was recalled by the Collector. A should have been prosecuted under s. 57 for not paying her monthly fee in advance. I. L. R. 1 All. 639

Execution of Decree.

1. Effect of striking an execution proceeding off the file. (P. C.) 2 P. C. R. 873 (20 W. R. 133; 12 B. L. R. 411). *See also* 20 W. R. 418, 24 W. R. 36, 56; 25 W. R. 513; I. L. R. 1 All. 616.

2. A judgment-creditor has, by virtue of the judgment without execution, no right to the property of the judgment-debtor, and is not entitled to recover it from the persons in whose hands it is. The procedure prescribed is to proceed to execute the judgment by attachment and sale if necessary, and not to proceed by action. (P. C.) 3 P. C. R. 330 (26 W. R. 82; L. R. 3 I. A. 241).

3. No one can be a transferee of a decree within the terms of Act VIII of 1859 s. 208, if the decree was not transferred to him by assignment, or if no incident had occurred (*i.e.* no death, no devolution, or no succession) on which the law could operate to transfer any estate to him. (P. C.) 3 P. C. R. 371 (L. R. 4 I. A. 66; I. L. R. 2 Cal. 327).

4. The above section (208) was not intended to apply where a serious contest arose with respect to the rights of persons to an equitable interest in a decree; nor was it intended to enable them to try an important question, such as the legitimacy or illegitimacy of an heir. (P. C.) *Ib.* *But see* I. L. R. 1 All. 686.

So where a decree had been purchased *benamee*, and the party alleging herself to be the real purchaser had not been

EXECUTION OF DECREE (*continued*).

put upon the record as a party, and an application for — made by her under s. 208 had been refused, and there was a dispute as to who was the real purchaser of the decree: *Held* that the applicant was not a party to the suit within the meaning of Act XXIII of 1861 s. 11, and had no right of appeal against the order refusing her application. I. L. R. 3 Cal. 371.

5. There must be two conditions to give the Court jurisdiction under Act XXIII of 1861 s. 11; the question must be between parties to the suit, and must relate to the —. A person, by merely applying for —, does not constitute himself a party to the suit. (P. C.) *Ib.*

6. In execution proceedings, the Court will look at the substance of the transaction, and will not be disposed to set aside an execution upon merely technical grounds when they find that it is substantially right. (P. C.) 3 P. C. R. 685 (L. R. 6 I. A. 233).

7. Although the Small Cause Court at Bombay has power to enforce its decree against moveable property only, yet if that decree be transmitted to a Court to which Act VIII of 1859 applies, the latter can, under s. 287, enforce it against immoveable property also. I. L. R. 1 Bom. 82.

8. *Quære* whether a Court executing the decree of a Small Cause Court under Act IX of 1850 s. 78, could enforce it against immoveable property. *Ib.*

9. Where an application was made for the issue of —, and the District Moonsiff made an order refusing execution, the decree being one passed not in a regular suit, but in a summary suit, and governed by the one year limitation; and the Subordinate Judge on appeal reversed the Moonsiff's order, applying the three years' limitation: *Held* by the High Court that, as Act X of 1877 s. 588 provided that orders passed in appeal from orders under s. 244 should be *final*, no second appeal lay; and that the High Court could not interfere under s. 622, as the Subordinate Judge had jurisdiction to hear the appeal. I. L. R. 1 Mad. 401. *See also* 23 *post*.

10. An application, under Act VIII of 1859, for —, was rejected by the Judge on the ground that the judgment-creditor had withdrawn from the former application. This order was reversed on appeal, and the case was sent back for disposal on its merits. The Judge then held that Act X of 1877, which had just come into force, applied, and on the ground that the decree-holder had failed to get execution upon his former application, dismissed the petition, but referred the case to the High Court upon the question whether he was under the circumstances at liberty to grant the application: *Held* that he was, and that the application should have been dealt with under the law which was in force at the time execution was sought. The effect of the provisions of Act X of 1877 s. 230 considered. I. L. R. 1 Mad. 403.

11. Pending the determination of the appeal against an order passed in —, the Appellate Court has power, under Act VIII of 1859 s. 338 and Act XXIII of 1861 s. 38, to stay —. (F. B.) I. L. R. 1 All. 178. *See* I. L. R. 1 All. 668.

12. A District Court is competent, under Act VIII of 1859 s. 6 and Act XXIII of 1861 s. 38, to transfer to its own file proceedings in — pending in a Court subordinate to it. (F. B.) I. L. R. 1 All. 180. *See* I. L. R. 1 All. 668.

13. Partial —. *See* Limitation (Act IX of 1871) 42; Mortgage 117; *post* 14, 39, 40.

14. Certain property was attached in execution of a decree against the judgment-debtor in the year 1847. This attachment was set aside on the application of persons claiming the property as their own. These persons were sued, together with the judgment-debtor, by the judgment-creditor, and another decree was passed in 1855, declaring the said property liable to sale in execution of the decree of 1847. The decree of 1847 had been satisfied in part in execution proceedings taken under the decree of 1855 against the heirs of the judgment-debtors: *Held* that the balance of the decree of 1847 could not be recovered in execution under the decree of 1855 against the heirs of the judgment-debtor, and that no acquiescence in the past on the part of the judgment-debtor under the decree of 1847 could render such execution valid. I. L. R. 1 All. 368.

15. On appeal by U, the High Court set aside a decree which the sons of K had obtained in the Court of first instance against U and certain other persons, in a suit brought by them for possession of one-third of certain real property. At the same time on appeal by two of the other persons aforesaid, it affirmed a decree which U had obtained against these persons and the sons of K for possession of two-thirds of the same property, in a suit in which he had claimed possession of the whole. It subsequently, on appeal by U against that portion of the decree made in the suit brought by him which dismissed his claim in respect to one-third of the property, reversed that portion which gave him a decree for the whole. The sons of K appealed to the Privy Council only from the decree of the High Court setting aside the decree obtained by them in the Court of first instance for one-third of the property. The Privy Council set aside this decree of the High Court, and restored the decree of the Court of first instance. In the meantime U was put into possession of the whole property in — of the High Court which he had obtained in the suit brought by him. When the sons of K, in — of the Privy Council, applied for possession of one-third of the property, U opposed the application on the ground that he was in possession under the decree of the High Court which had become final: *Held* that the decree of the Privy Council must be executed, notwithstanding that its execution involved the disturbance of the possession obtained by U under the decree of the High Court which had become final. (F. B.) I. L. R. 1 All. 457.

16. A, who had been directed by a decree to refrain from preventing her daughter returning to her husband, after the date of the decree permitted her daughter, who was of age, to reside in her house: *Held* that such conduct on the part of A was no such evidence of interference with her daughter's return as would justify the — against her under Act VIII of 1859 s. 200. I. L. R. 1 All. 501.

17. The jurisdiction of a Court to which a decree has been transferred for execution is strictly limited to carrying out such execution. Such Court has no power to issue a certificate under Act VIII of 1859 ss. 285 and 286 transferring the decree, already transferred to it, to another Court for execution. The Court to which a decree has been properly transferred for execution having struck the case off the file, a subsequent application for a further transfer of the case to another Court for execution should be made to the Court which originally passed the decree sought to be executed. I. L. R. 3 Cal. 512.

18. The effect of Act I of 1868 s. 6 and Act X of 1877 s. 3, taken together, is that the chapter of the new Code of Civil Procedure which deals with — is prospective, and does not affect proceedings already commenced. (F. B.) I. L. R. 2 Bom. 148. *See also* (F. B.) I. L. R. 3 Cal. 662 and *post* 19; *also* I. L. R. 4 Cal. 825. *But see* I. L. R. 2 All. 74.

19. The holder of a decree for money applied for the attachment in the — of certain moneys deposited in Court to the credit of the judgment-debtor. On 4th June 1877, the Court of first instance refused the attachment on the ground that the decree directed the sale of certain immoveable property for its satisfaction, and awarded no other relief. The order of the Court of first instance was affirmed by the Lower Appellate Court on 4th August 1877. Act X of 1877, repealing Act VIII of 1859 and Act XXIII of 1861, came into force on 1st October 1877. On 13th November 1877 the decree-holder applied to the High Court for the admission of a second appeal from the order of the Lower Appellate Court, on the ground that the decree had been misconstrued: *Held* that an appeal under the repealed Act VIII of 1859 was admissible under Act I of 1868 s. 6, and that the order of the Lower Appellate Court was also appealable under Act X of 1877 s. 584. (F. B.) I. L. R. 1 All. 668. *See also* (F. B.) I. L. R. 3 Cal. 662 and preceding case, and I. L. R. 2 All. 91; I. L. R. 5 Cal. 259. *But see* I. L. R. 2 All. 74.

20. To enable the heir of a deceased person to apply, under Act VIII of 1859 s. 208, for the execution of a decree held by such person, a certificate under Act XXVII of 1860 is not indispensable. I. L. R. 1 All. 686.

21. Where a decree had been obtained against an Armenian domiciled in India who subsequently died intestate, and an order was made reviving the decree against one of his children and ordering execution to proceed before letters of administration to his estate had been taken out, and without enquiry being made as to who were his legal personal representatives: *Held* that, although no appeal lay against the order, yet that as it was clearly erroneous, and

EXECUTION OF DECREE (*continued*).

as, under the circumstances of the case, it must lead to the greatest confusion and injury to the interests of the parties if the execution was proceeded with, the High Court was justified in interfering under the 24 and 25 Vic. c. 104 s. 15. I. L. R. 3 Cal. 708.

22. A sued B and obtained possession of certain property under a decree. On appeal this decree was reversed. The judgment and decree of the Appellate Court made no order about mesne profits which had accrued during the time the land was in possession of A. B thereupon, seeking execution of the Appellate Court's decree, applied to be reinstated in possession, and also for an order awarding her mesne profits for the time during which she was out of possession of the said lands: *Held* that, upon such application, it was competent for the Court to cause restitution to be made of all that the party against whom the erroneous decree had been enforced had been deprived of by such enforcement. I. L. R. 3 Cal. 720.

23. There is no appeal against an order made under Act X of 1877 s. 244 determining questions between the parties to a suit as to the amount of mesne profits recovered by the plaintiff subsequently to the decree, and as to the amount payable on account of the costs of execution of that decree. I. L. R. 2 Bom. 553. *See also* 9 *ante*, and I. L. R. 5 Cal. 50.

24. Where, with reference to 40 Vic. c. 7 (Mutiny Act, 1877) s. 99, a decree for money made against a military officer serving in India directed that the judgment debt should be stopped out of a moiety of such officer's pay: *Held* that the decree-holder could not obtain satisfaction of the decree by attachment of such officer's moveable property. I. L. R. 1 All. 730.

25. A person may be a representative within the meaning of Act VIII of 1859 s. 203 (corresponding with Act X of 1877 s. 252) so as to make the decree effectual for the purpose therein stated, although that person is not the heir. *Per* Markby *J.* (F. B.) I. L. R. 4 Cal. 142.

26. The person taking possession of the estate of a deceased Hindoo (who has left a will, of which, however, no probate has been granted) must be treated for some purposes as his representative, until some other claimant comes forward. A judgment obtained against such a person, even if it cannot be executed in the hands of an executor when he has taken out probate, is at any rate sufficient to enable a plaintiff to bring a suit against the executor in order to have the decree satisfied. I. L. R. 4 Cal. 342.

27. Moneys realised as due under a decree, if unduly realised, are recoverable by application to the Court executing the decree, and not by separate suit. (F. B.) I. L. R. 2 All. 61.

28. The mode of enforcing against a Sirdar's heir (who is not a Sirdar) a decree passed by the Agent's Court against that Sirdar, is by a suit founded upon the decree. I. L. R. 3 Bom. 42.

29. Where a Court on the application of a decree-holder made an order for execution, and such order was set aside (on appeal) on the ground that such Court had no jurisdiction to entertain the application: *Held* that the decree-holder, having invoked the jurisdiction of the Court, was estopped from calling in question an order subsequently passed by it, directing him to refund a sum realised under the order for execution. *Ib.*

30. Execution of Decree of Foreign Court. *See* Jurisdiction 23.

31. Striking off an execution order from the file is an act which may admit of different interpretations according to the circumstances of the case, and is not conclusive proof that such execution-proceedings were intended to be abandoned. I. L. R. 4 Cal. 877.

32. In a suit for damages for the removal of oil and flour mills and a steam engine and boiler seized in — of a Small Cause Court: *Held* that such things were fixtures, and not goods and chattels within the meaning of Act IX of 1850 s. 58, and therefore could not be seized in —. The question whether fixtures are removeable by a tenant as against his landlord has nothing to do with the question whether they are seizable in — as goods and chattels. (O. J.) I. L. R. 4 Cal. 946.

33. The words "the last preceding application" in Act X of 1877 s. 230 cl. 3 mean an application under that section, and not an application under Act VIII of 1859. I. L. R. 2 All. 275.

34. The concluding clause of the same section refers to the question of limitation, and not that of due diligence. I. L. R. 2 All. 281.

35. Where a decree was sent to a Court for execution, and was subsequently transferred by assignment, and the transferee applied for — to the Court to which the decree was sent for execution: *Held* that such application should be made not to such Court but to the Court which passed the decree. I. L. R. 2 All. 283.

36. *Held* that Act X of 1877 does not contemplate the sale of a decree for money as the result of its attachment in the execution of a decree, and that the attachment of a decree for money in the mode ordained in s. 273 cannot lead to its sale; also that the last clause but one of s. 273 applies to other than money decrees. I. L. R. 2 All. 290.

37. Where two decrees for money, although they were not passed by the same Court, were being executed by the same Court: *Held* that the provisions of the first clause of s. 273 were applicable on principle. *Ib.*

38. The transferee of a decree applied, while an application by the original holder of such decree to execute it was pending, to be allowed to execute it. The Court, in accordance with Act X of 1877 s. 232, directed notice of the transferee's application to be given to the transferor and the judgment-debtor. The transferee failed to pay the Court-fee leviable for the issue of such notice, and the Court dismissed his application. The transferee subsequently made a second application to be allowed to execute the decree: *Held* that such application could not be rejected, with reference to s. 230 on the ground that due diligence had not been used on the former application to procure complete satisfaction of the decree, because such application had not been granted, and, therefore, the question whether "on the last preceding application" due diligence was used to procure such satisfaction did not arise. I. L. R. 2 All. 385.

39. A having obtained a decree against B and C (the former being made primarily liable) took out execution, and on obtaining partial payment of the amount due to him by the sale of certain property belonging to B, entered up satisfaction as to that amount. Subsequently, D, another judgment-creditor of B's (who had a lien on the properties sold in A's —), brought a suit against B and A, seeking for a refund of the moneys received by the latter; and this suit (to which C was not made a party) was compromised by A, who agreed to make a partial refund: *Held* on A's applying for execution a second time against the representatives of C, that the partial satisfaction of the decree entered up was binding upon A so as to prevent a second application for execution for the same amount being made; and that even were it not so, the refund made on a private understanding between them by A to D in the suit brought by D against B and A, could not be binding upon B, unless he were a party to the compromise, and much less would it be so as against the representatives of C, who was not a party to that suit, and therefore the application could not be entertained. I. L. R. 5 Cal. 128.

40. The plaintiff obtained a decree against T, A, and J, in a suit, the subject-matter of which exceeded Rs. 5,000, and, in part execution thereof, attached property worth less than that amount. D having resisted the execution of the decree, the plaintiff's claim was numbered and registered as a suit under Act VIII of 1859 s. 229. Upon investigation the First Class Subordinate Judge made an order staying execution of the decree. The plaintiff appealed to the District Judge, who held that no appeal lay to him as the subject-matter of the original suit, out of which the execution suit arose, exceeded Rs. 5,000. The plaintiff appealed against this decision to the High Court: *Held* that the investigation of a claim under Act VIII of 1859 s. 229 was not to be regarded as a fresh suit, but was merely a continuation of the original suit, and that there was, therefore, no appeal against the order in question to the District Judge. I. L. R. 4 Bom. 123. *Dissented from* I. L. R. 4 Bom. 515.

41. Where a judgment-debtor has out of Court partly satisfied his decree-holder subsequent to the transmission of the decree for execution to another Court, but before actual execution has been applied for, he is entitled, on execution in full being demanded, to an order from the

EXECUTION OF DECREE (*continued*).

Court to which the decree is transferred for execution, calling upon the decree-holder to certify the fact of such part-payment. I. L. R. 5 Cal. 448.

42. The provisions of Act VIII of 1859 s. 206 only prevent *the Court executing the decree* from recognising a payment made out of Court, and do not bar a suit for the refund of such payment. I. L. R. 4 Bom. 295.

43. G held a decree against D, who satisfied it out of Court, and obtained a receipt from G to the effect that it was satisfied. Notwithstanding this G executed the decree and recovered the amount of it through the Court, although D pleaded satisfaction in the execution proceedings and produced the receipt. In a suit brought by D against G for refund of the money received by G out of Court, the defendant contended that the suit was not maintainable: *Held* that it was maintainable according to the law as it stood before the passing of Act XII of 1879. *Ib.*

44. *Quære.* Whether such a suit is maintainable under Act XII of 1879 s. 36 which has been substituted for Act X of 1877 s. 258. *Ib.*

45. *Held* also, that the statement contained in the receipt passed by G to D to the effect that the decree had been satisfied, was sufficient to shift the burden of proof to the defendant to show that it was an incorrect statement. *Ib.*

46. A decree-holder, having assigned a share of her decree, applied several times jointly with such assignee for execution. On a subsequent application made by the original decree-holder alone, the Court, while granting the application, directed that the proceeds arising from such execution should only be paid over to the co-decree-holders jointly: *Held* that the question in dispute being one between co-decree-holders, and not between parties to the suit or their representatives as contemplated by Act X of 1877 s. 244 art. (*c*), no appeal would lie from such order. I. L. R. 5 Cal. 592.

47. Where a Court in one district transfers a decree for execution to a Court situate in another district, it is beyond the jurisdiction of the Court executing the decree to question the correctness or propriety of the order under which the decree was sent to such Court for execution. I. L. R. 5 Cal. 736.

48. Where, in the opinion of the Court, sufficient cause has been shown against the execution of a decree transferred for execution, the Court executing the decree should follow the procedure prescribed by Act X of 1877 s. 239. *Ib.*

49. When a judgment-debtor has died after decree, but before application has been made to execute the decree, the Court, before directing the attachment and sale of any property to proceed, must issue a notice to the party against whom the execution is applied for to show cause why the decree should not be executed against him, and its omission to do so will invalidate the entire subsequent proceedings. I. L. R. 6 Cal. 103.

50. A judgment having been obtained by A against B, and B having died before application was made for execution, A applied for — upon a tabular statement, in which the judgment-debtor was stated to be C, widow of B, and C was also described as the person against whom execution was sought. Upon this application the property mentioned in the tabular statement was directed to be attached and sold, and it was accordingly sold in execution and purchased by A. No notice under Act X of 1877 s. 248 had been served upon C before issue of execution: *Held* that the application was improper; that the order for attachment and sale should not have been made; and that the Court which made it should have set the execution aside as soon as it became aware that no notice had issued previous to its issue. The fact of there being no section in the same Act expressly authorizing a Court to set aside its proceedings is immaterial, as every Court has an inherent right to see that its process is not abused or does not irregularly issue, and may set aside all irregular proceedings as a matter of course, provided that the interests of third parties are not affected. *Ib.*

51. *Semble.* Under s. 248, the fact that application to execute the decree had been made in the life-time of B would make no difference, unless an order had been made and the property actually attached under it; as whenever an application is made for execution against a legal representative of the judgment-debtor, the notice required by the section must be issued to him, unless the Court has already ordered execution to issue against him upon a previous application. *Ib.*

52. Although the High Court in its Appellate Side does not, as a general rule, execute its own decrees or orders, yet this circumstance in no way affects the vitality of its jurisdiction to execute decrees as specified under Act X of 1877 s. 649. I. L. R. 6 Cal. 201.

53. *Quære.* Whether, upon an application for execution of a decree, an objection, apparent on the face of the record, to the jurisdiction of the Court which made the decree, can be entertained. I. L. R. 4 Bom. 638.

See Adjustment 1.
Ancestral Property 1.
Arrest 2.
Attachment.
Conjugal Rights 1, 8.
Contempt of Court 6.
Costs 1.
Deccan Agriculturists Relief 5.
Decree 11.
Ejectment 6.
Estoppel 10.
Ex-Parte 4, 6.
Husband and Wife 5, 12.
Imprisonment 1, 4.
Indigo 2.
Injunction 1.
Instalments 1.
Interest 4*a*, 5, 6, 9.
Jurisdiction 4.
Limitation 19, 21, 22, 24, 25, 26, 36, 38, 48, 50.
,, (Act XIV of 1859) 1, 5, 6, 7, 14, 17.
,, (Act IX of 1871) 13, 16, 21, 22, 23, 24, 25, 28, 47, 49, 50, 53, 54, 56, 57, 59, 60, 63, 67, 72, 73, 76, 83, 85, 89, 95.
,, (Act XV of 1877) 5, 24, 25, 26, 35, 37, 38, 52, 53, 54, 55.
Manager 5, 6.
Mesne Profits 1, 4, 8, 9.
Mortgage 30, 38, 103
Partnership 16, 17, 18.
Pension 4.
Possession 18, 19.
Practice (Suit) 11.
Principal and Surety, 3, 4, 8, 9, 10, 11.
Privy Council 43, 44, 45.
Receiver 1, 2.
Registration 23.
Relinquishment 5.
Res Judicata 3.
Right to Light and Air 5.
Sale (in Execution of Decree).
Sheriff 4.
Small Cause Court 6, 11, 14, 26.
Special Appeal 9.
Toda Giras Huk 2.

Executor.

See Breach of Trust 1.
Execution of Decree 26.
Limitation (Act IX of 1871) 84.
Practice (Appeal) 17.
Will 16, 24, 25, 31, 35, 37, 39, 40, 43, 44, 52, 57, 59.

Ex-Parte.

1. In Act VIII of 1859 s. 119, the words "no appeal shall lie from a judgment passed — against a defendant who has not appeared" relate to the case of a defendant who has not appeared at all in the suit, and not to a defendant who has once appeared, but who fails to appear on a day to which the cause has been adjourned. (P. C.) L. R. 5 I. A. 233 (I. L. R. 2 All. 67).

2. Act VIII of 1859 s. 119, which strictly limits the period for making an application for rehearing a suit decided —, absolutely bars the entertaining of such application, after the prescribed time, by the first or any other Court; and the plaintiff has a right, in special appeal, to appeal against an order passed by the Lower Appellate Court on such application, irrespective of his remedy by motion in the High Court under 24 and 25 Vic. c. 104 s. 15. 25 W. R. 304 (I. L. R. 2 Cal. 114).

3. The first Court refused to receive the defendant's written statement because it had been tendered after the day on which the Court had ordered it to be filed, and the delay had not been satisfactorily explained. The Court however framed the issues in the presence of the defendant's pleader, who was also permitted to cross-examine the plaintiff's witnesses, and the Court made a decree in favor of the plaintiff. In appeal the District Judge held that the decree of the first Court was — under Act VIII of 1859 s. 119, and that therefore no appeal lay. *Held* by the High Court in special appeal that the decree of the first Court was not — under the circumstances. I. L. R. 1 Bom. 217.

4. A decree obtained — is, in the absence of fraud or irregularity, as binding for all purposes as a decree in a contested suit; and is admissible in evidence even though the period for executing it has expired. I. L. R. 3 Cal. 383.

5. No appeal lies under Act X of 1877 from an order made under that Act rejecting an application for an order setting aside a decree made — against a defendant. (F. B.) I. L. R. 1 All. 748.

An appeal lies from an order, made under Act X of 1877 s. 534, refusing to set aside an — decree. I. L. R. 2 Bom. 644.

6. Under Act VIII of 1859 s. 201, a judgment-creditor has the option of enforcing his decree against the person or property of the judgment-debtor; and the fact that such decree is an — one makes no difference. I. L. R. 4 Cal. 583.

7. It is not necessary, before proceeding to hear and determine a suit — under Act X of 1877 s. 100, that all the process prescribed by law for compelling the attendance of the defendant as a witness should be exhausted. It is sufficient that due service of the summons upon the defendant is proved. If such proof is not given, the courses to be adopted are one or other of those mentioned in clauses (*b*) and (*c*) of s. 100 according to the circumstances of the case. I. L. R. 5 Cal. 353.

See Ancestral Property 3.
Attachment 21.
Hindoo Widow 62.
Limitation (Act IX of 1871) 13, 89, 91.
Mortgage 133.
Practice (Appeal) 18.
,, (Suit) 14.
Privy Council 34.
Service 2.
Small Cause Court 3, 20.
Special Appeal 10.
Witness 2.

Explosion.

See Railway 2.

Extradition.

1. It is not essential to the validity of a warrant issued under Act X of 1872 s. 157 that the Magistrate issuing it should be, at the time he issues it, within the local limits of his jurisdiction. He may issue such a warrant from a place in foreign territory. (Cr.) I. L. R. 1 Bom. 340.

False Charge.

1. To constitute the offence of making a — under s. 211 Penal Code, it is enough that the — is made though no prosecution is instituted thereon. (Cr.) I. L. R. 1 All. 497, 527.

2. There is nothing in s. 211 Penal Code which limits the penalty there imposed to cases in which attempts have been made to substantiate false charges in a Court of Justice. A — made before the Police is therefore punishable under this section. (Cr.) I. L. R. 5 Cal. 281.

See Criminal Proceedings 10, 14, 15, 17.

False Evidence.

1. M instigated Z to personate C and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding: *Held* that the offence of fabricating — had been actually committed, and that M was properly convicted of abetting the commission of such offence. (Cr.) I. L. R. 2 All. 105.

See Contempt of Court 1, 5.
Criminal Proceedings 1, 4, 20.
Cumulative Sentences 3.
Perjury.

False Information.

See Criminal Proceedings 15, 17.

False Personation.

See False Evidence 1.

Family Usage.

See Custom.

Father.

See Ancestral Property 1, 2, 3, 4, 7, 10, 13.
Auction-Purchaser (Execution-Sale) 1.
Benamee 1, 2, 4, 5.
Certificate 7.
Compromise 3.
Father's Brother's Daughter's Son.
Father's Brother's Grandson.
Gift 2, 4, 11, 14, 15, 16.
Grandfather.
Guardian and Minor 23, 27.
Hindoo Law (Alienation) 1.
,, (Coparcenary) 14*a*, 19.
,, (Inheritance and Succession) 34, 43.
Illegitimate 9.
Insolvency 1.
Legitimacy 4.
Letters of Administration 2.
Limitation (Act XIV of 1859) 18.
,, (Act XV of 1877) 27.
Mahomedan Law 13.
Maintenance 5.
Mortgage 75, 76, 107.
Partition 12, 22.
Res Judicata 31.
Will 11.

Father's Brother's Daughter's Son.

See Hindoo Law (Adoption) 47.

Father's Brother's Grandson.

See Certificate 5.

Ferry.

1. If, when directed by the order of a public servant duly promulgated to him, to abstain from plying a boat for hire at or in the immediate vicinity of a public —, a person disobeys such direction, he renders himself liable to punishment under s. 188 Penal Code. (Cr.) I. L. R. 1 All. 527.

2. A, the owner of a — granted him under a Government settlement, brought a suit to restrain B from running another — over the same spot where A's — plied for hire. It appeared on the evidence that B levied no tolls on his ferry, but it was not shown that it was used only for the conveyance of his own servants and ryots: *Held* that such suit was maintainable. I. L. R. 4 Cal. 599.

3. M took a lease for three years of a Government — and covenanted with the Magistrate, who granted the lease, not to underlet or assign the lease without the leave or license of the Magistrate. M subsequently admitted B as his partner, to share with him equally in the profits to be derived from the lease: *Held* that such partnership was not void by reason of the covenant not to underlet or assign the lease. (F. B.) I. L. R. 2 All. 411.

See Criminal Trespass 2.

Fiduciary.

See Attorney and Client 1, 3, 4.
Deed of Sale 7.
Limitation (Act IX of 1871) 84.

Fieri Facias (Writ of).

See Sheriff 1.

Fine.

See Affray 1.
Arms 1.
High Court 5.
Imprisonment 4.
Jurisdiction 19.
Public Servant 9.
Stamp Duty 16.

Fire.

See Bill of Lading 1.
Evidence (Secondary) 1.
Railway 8.
Sale 6.

Fishery.

See Julkur.

Fixtures.

See Execution of Decree 82.

Foreign State.

See Contract 4, 5.
Enhancement 29.
Extradition 1.
Foreign Court.
Jurisdiction 5, 6, 7, 18, 22, 23.
Kota.
Limitation (Act IX of 1871) 31.
Zanzibar.

Foreign Court.

See Jurisdiction 23.

Forest.

See Theft 1.
Timber 2, 3.

Forfeiture.

1. Since Act XXI of 1850 came into force, mere loss of caste does not occasion a — of rights or property. I. L. R. 1 Bom. 559.

See Arrest 4.
Enam 1.
Estoppel 19.
Ghatwals 5.
Gift 15.
Guardian and Minor 18.
Hindoo Widow 22, 23, 36, 48.
Husband and Wife 7, 14.
Lease 1*a*, 9.
Marriage 8.
Recognizance 1, 2.
Revenue Settlement 2.
Service Tenure 1.

Forgery.

1. Judgment of the High Court, reversing a decision of the Lower Court which held a deed to be a —, upheld on a consideration of the evidence in the case. (P. C.) 2 P. C. R. 454 (16 W. R. P. C. 16; 8 B. L. R. 490).

2. The offence imputed against an accused, who, in a civil suit, is alleged to have used as genuine, a document which he knew to be a forged document, is one cognizable under s. 471 Penal Code. Such accused should, therefore, be charged under that section, and not under s. 196. (Cr.) I. L. R. 5 Cal. 717.

3. Falsification of a record made in order to conceal a previous act of negligence not amounting to fraud, does not amount to — within the meaning of ss. 463 and 464 Penal Code. (Cr.) I. L. R. 4 Bom. 657.

See Deed of Sale 1.
Judgment 3.
Limitation (Act IX of 1871) 69.
Mortgage 133.

Fraud.

1. Constructive fraud. *See* Mortgage 53.

See Attorney and Client 6.
Auction-Purchaser (Execution-Sale) 2.
Bailment 1, 2, 4.
Bond 1.
Cesses.
Champerty 5.
Contract 6.
Co-Sharers 10.
Cotton Frauds (Bombay).
Deed of Sale 6, 7.
Endowment 16.
Forgery 3.
Gift 13, 17*a*.
Guardian and Minor 2, 3.
Hindoo Law (Adoption) 47.
,, (Coparcenary) 20, 23, 24.
Lease 1.
Limitation 10.
,, (Act IX of 1871) 10, 20, 62.

Fraud (*continued*).

See Mortgage 44, 53, 68, 75, 110, 126.
Partition 22.
Payment 2.
Practice (Appeal) 20, 29.
Principal and Surety 2.
Privy Council 22.
Prostitution 8.
Railway 1, 8.
Registration 48.
Relinquishment 3.
Res Judicata 29.
Reversioner 8.
Sale (for Arrears of Revenue) 5.
" (in Execution of Decree) 51, 54.
Solicitor 1.
Stamp Duty 3.
Theft 1.
Will 48.

Fresh Suit.

See Dismissal of Suit or Appeal 1.
Execution of Decree 27, 40.
Interest 4*a*.
Joinder of Causes of Action 1.
Lakheraj 1, 2.
Mesne Profits 4.
Relinquishment 5.
Res Judicata 1, 36.
Toda Giras Huk 2.

Full Bench.

1. A question arising from a conflict of opinion between individual Judges is not, properly speaking, the subject of reference to a —. (F. B.) I. L. R. 3 Cal. 20.

See High Court 1, 21, 24.
Jurisdiction 46.

Gahan Lahan Mortgage.

See Mortgage 67.

Gambling.

1. Where a Police officer, unauthorized by a Magistrate or District Superintendent of Police, enters and searches an alleged gaming-house, and arrests persons found therein, a Magistrate is justified in convicting such persons, if it is proved, without resorting to the presumption created by Act II of 1867 (Bengal) s. 6, that the house is a gaming-house. (Cr.) I. L. R. 4 Cal. 659.

2. A Deputy Inspector of Police is not authorized to enter and search an alleged gaming-house, unless he receives authority so to do from a Magistrate or a District Superintendent of Police. (Cr.) I. L. R. 4 Cal. 710.

3. Where such an unauthorized entry and subsequent arrest of persons in a gaming-house takes place, there being no other evidence of an offence under Act II of 1867 (Bengal) s. 5, a Magistrate has no evidence before him on which he can convict. (Cr.) *Ib.*

4. The evidence required cannot be presumed under s. 6 of the Act, because that presumption only arises when the proceedings are authorized by s. 5. (Cr.) *Ib.*

Garo Hills.

See Jurisdiction 9.

Ganges (River).

See Churs 6.

Gentile (or Gotraja).

See Hindoo Law (Inheritance and Succession) 8, 46.
" Widow 24, 56.

Ghatwals.

1. The long uninterrupted possession of — was held entitled to greater weight than the *issumnovisee* returns. (P. C.) 2 P. C. R. 469 (16 W. R. P. C. 29; 8 B. L. R. 504; 14 Moo. 259).

2. Where lands are held by — subject to certain services, so long as they are willing and able to perform the services, the zemindar has no right to put an end to the tenure, whether the services are required or not, and notwithstanding an arrangement come to between the Government and the zemindar by which the Government increased the revenue of the zemindaree in consideration of the dispensation with those services by the Government. (P. C.) 2 P. C. R. 818 (13 B. L. R. 124; L. R. I. A. Sup. 181).

3. An auction-purchaser at a revenue-sale is not entitled to turn out of possession — whose tenures were granted subsequent to the Permanent Settlement, his only right (if any) being to enhance the rent. (P. C.) *Ib.*

4. Where grants of land had been made prior to the Permanent Settlement on ghatwalee tenure at a fixed rent, and the Government subsequently dispensed with the services on the part of the zemindar: *Held*, in a suit by the zemindar to enhance the rents, that as long as the — were able and willing to perform the services, the zemindar had no right to enforce payment of an enhanced rent on the ground that the services were no longer required. The — are dependent talookdars within the meaning of Reg. VIII of 1793, and are protected from enhancement by s. 51 cl. 1. I. L. R. 3 Cal. 251.

5. The dismissal of a ghatwal will carry with it the forfeiture of his tenure. I. L. R. 5 Cal. 740.

See Service Tenure 2, 3.

Gift.

1. In establishing the validity of a deed of — taken from a woman stricken with a mortal disease and in expectation of death, proof at least of equal strictness as is required to prove a testamentary disposition must be given, and the proof necessary to support such a transaction ought to be sufficient to establish that she knew what she was about, and intended to make such disposition of her property. (P. C.) 2 P. C. R. 49 (10 W. R. P. C. 3; 11 Moo. 139).

2. Where a Mahomedan transferred certain Government securities to his son, reserving the interest to himself for life, the object of the disposition being to give the son a larger share of the father's property than would come to him by succession *ab intestato*: *Held* that the transaction could not be impeached on moral grounds, nor did it violate any provision of the Hedaya. (P. C.) 2 P. C. R. 98 (10 W. R. P. C. 25; 11 Moo. 517).

3. From the insertion of an express power of alienation in the subsequent *hibbanamah*, no intention to restrain alienation can be inferred from the omission of such a power in a former *hibbanamah*, unless the two deeds are parts of one design or form a connected series so as to be construed as a whole. (P. C.) 2 P. C. R. 661 (18 W. R. 226; 11 B. L. R. 86).

4. The general principle of Mahomedan law that a — is invalid without acceptance and seisin by the donee, is subject to the exception that where there is, on the part of a father or other guardian, a *bonâ fide* intention to make a —, the law will be satisfied without change of possession, and will presume the subsequent holding of the property to be on behalf of the minor. (P. C.) 3 P. C. R. 87 (23 W. R. 208; L. R. 2 I. A. 87; 15 B. L. R. 67).

5. The rule of Mahomedan law that the — of *Mushâ*, or an undivided part in property capable of partition, is invalid, does not apply to definite shares in zemindarees

GIFT (*continued*).

which are in their nature separate estates with separate and defined rents. (P. C.) *Ib.* *See also* I. L. R. 2 All. 93.

6. According to Mahomedan law, a mere deed of — without consideration is invalid, unless accompanied by a delivery of the thing given as far as it is capable of delivery, or a seisin on the part of the donee. (P. C.) 3 P. C. R. 287 (26 W. R. 36; I. L. R. 2 Cal. 184; L. R. 3 I. A. 291).

7. In order to make a deed of — for a consideration valid, two conditions must concur, (1) an actual payment of the consideration by the donee; and (2) a *bonâ fide* intention by donor to divest himself *in presenti* of the property and to confer it upon donee. (P. C.) *Ib.*

8. The adequacy of consideration for a — is immaterial. (P. C.) *Ib.*

9. Where a Mahomedan of weak intellect and impaired health executed a deed in the form of a *hiba-bil-ewaz* (which would, under the Mahomedan law, operate to transfer the property which was the subject of it without delivery of possession) by which he made a — of certain immoveable, as well as a large quantity of moveable, property to his daughter in lieu of a diamond ring which he had received from her, and it appeared that there was no intention on his part to make an immediate transfer of the property to her, and that she herself must have perfectly understood that the transaction was not a real one, and where neither she nor her husband was called to prove the transaction to have been a real one, or the manner in which the property was enjoyed between her and her father: the deed was held to be void and of no effect. (P. C.) 3 P. C. R. 601.

10. *Held* that the donor in this case, although he may have been a lunatic at an earlier period of his life, appears to have recovered afterwards, and to have been competent to deal with the ordinary affairs of life, and perfectly able to comprehend such a transaction as a — of his property to his wife; that not only was a verbal — made by him in the most formal way, but that soon after an instrument was executed by him to carry the — into effect; that though the dower agreed upon by him may have been only nominal at the time of marriage, he may have chosen a large dower to be the consideration for the —; that it is not necessary by Mahomedan law that dower should be agreed upon before marriage, but that it may be fixed afterwards; that the sum itself, although a large one, was not excessive compared with the property of the donor; that the precise amount of dower mentioned was not material to sustain the —, because any amount would be a sufficient consideration for that purpose; and that there was a change of possession in conformity with the terms of the —, which, even without consideration, would be sufficient to support the —. (P. C.) 3 P. C. R. 804.

11. A Hindoo son, subject to the Mitacshara law of inheritance, sued to obtain a declaratory decree for a moiety of a house which the father had conveyed by deed of — to plaintiff's brother, being the self-acquired property of his father, on the ground that under the Hindoo law a father is not permitted to make a — of immoveable property to one son to the injury of the other: *Held* (reviewing all the authorities and precedents on the subject) that although the prohibition of such a —, on moral or spiritual grounds, may be implied by the texts of Hindoo law, yet, where it is not declared that there is absolutely no power to do such acts, those acts, if done, are not necessarily void, and that therefore an exclusive — to one son by the father of self-acquired immoveable property is not illegal. I. L. R. 1 All. 394.

12. C, a Hindoo subject to the Mitacshara law, died leaving a widow R, but no issue. In his lifetime he had transferred to R by — mouzah R, a portion of his real estate. After his death J and P, his brothers, sued R for the possession of C's real estate on the ground that it was ancestral property. Their suit was dismissed, it being held by the Sudder Court that C's real estate was separate property to which his widow would be entitled to succeed by inheritance, that R had acquired mouzah R by — from C, and that B took under the — a life-interest in the property only. J and P having died, R made a — of mouzah R to her agent as a reward for his faithful services. N, the son of J, sued, as the heir of his uncle C, to set aside this — to the agent as illegal: *Held* that the decision in the former suit did not make the question as to the interest R took under the — from her husband *res judicata*, inasmuch as N did not claim through his father when suing as heir to his uncle. *Held* also, on the finding that R had acquired the property from her husband by —, that she did not take an absolute interest in the property under the — and her husband's heirs could question the validity of the — to the agent. *Held* also that the — to the agent, being made only out of motives of generosity, was invalid. I. L. R. 1 All. 734.

13. In the year 1870 H made a — of certain immoveable property to W, who was his mistress but lived with him as his wife, "on condition of her continuing to be his wife and remaining obedient to him, her husband." W acquired possession of the property in virtue of the —, and had held it for eight years, when a creditor of H, under a decree enforcing a debt created by H subsequently to the —, sued, amongst other things, for a declaration that the — was invalid, as it had been made for an illegal consideration, *viz.*, the future immoral co-habitation of W with H: *Held* that, assuming that the consideration for the — was illegal, in the absence of fraud, the — could not be set aside so many years after W had acquired possession thereunder. I. L. R. 2 All. 433.

14. Where the circumstances attending the execution of a deed of — by a Hindoo governed by the Mitacshara law, conveying to his son, a minor, the whole of his (the father's) interest in the ancestral property including certain property then under attachment, led to the inference that the object of the — was to save the family estate from being ruined by the extravagance of the father, and not to defeat the just rights of the father's creditors, even if the — were void against the father's creditors, it was binding and operative between the parties to it, and therefore from the moment of its execution, the father ceased to have any joint interest in the family estate. I. L. R. 5 Cal. 425.

15. The acceptance of the — on behalf of the minor, did not deprive him of his rights as a son under the Mitacshara law to question an execution-sale of a part of the ancestral property in satisfaction of such debts of his father as were not binding upon the son. *Quære* whether, if the son had been of age and had accepted the —, he would have thereby forfeited or relinquished his rights of a Mitacshara son. *Ib.*

16. D, in pursuance of a promise to give his daughter a dowry, about two years after her marriage, made a — of joint ancestral property to G, her father-in-law. P, D's son, sued his father and G to have the — set aside as invalid under Hindoo law: *Held* that the — not having been made with the plaintiff's consent, and not being for any purpose allowed by Hindoo law, was invalid, and that the plaintiff was entitled to have it set aside, not to the extent only of his own share in such property, but altogether. I. L. R. 2 All. 635.

17. The provisions of the Mahomedan law applicable to gifts made by persons laboring under a fatal disease do not apply to a so-called — made in lieu of a dower-debt, which is really of the nature of a sale. I. L. R. 2 All. 854.

17*a*. A decree-holder instituted a suit against his judgment-debtor and the latter's son for a declaration that a — by the judgment-debtor to his son of certain property was fraudulent, and that such property was liable to be taken in execution of the decree: *Held* that such — having been made by the donor out of natural love and affection for the donee and in order to secure a provision for him and his descendants, and therefore for good consideration, and having operated, and the donor having reserved to himself sufficient property to satisfy the decree, the mere fact that the donor reserved to himself no property within the jurisdiction of the Court which made the decree was not a ground for holding that such — was fraudulent and not made in good faith, and for setting it aside and allowing the decree-holder to proceed against the property transferred by it. I. L. R. 2 All. 891.

18. In this case the Privy Council was satisfied, as the High Court below was satisfied, that the Mahomedan Judge came to a right conclusion in holding that the transaction in question was a — for a consideration, and that the words relied on to cut it down to an *ariat* or loan, *viz.*, that "she might maintain herself out of the estates," have not that effect, and that there appear to be various instances in the books on Mahomedan law in which very similar words, used after words of absolute —, have been read as being descriptive of the motive or consideration of

Gift (*continued*).

the —, and ineffectual to control the operation of technical words of —. (P. C.) L. R. 8 I. A. 25.

Gomashta.

Gosavi.

Gotraja.

Government.

1. To question an act of State directly or indirectly, the contention must be raised on a suit to which the — must be made a party. (P. C.) 2 P. C. R. 98 (10 W. R. P. C. 25; 11 Moo. 517).

2. Where, by a decree of the Court of Special Commission established under Act IX of 1859, property was directed to be made over to a claimant, the proceedings of Officials making over that property were followed by a suit against — to obtain possession of a portion of that property, in which suit the — raised no question as to the propriety of the decree or to the making over of the bulk of the property under it, the — was held bound as to the right of the decree-holder to the property. (P. C.) 2. P. C. R. 322 (5 B. L. R. 312).

Granddaughter.

Grandfather.

Grandmother.

Grandnephew.

Grandson.

GRANDSON (*continued*).

See Hindoo Widow 24, 29.
Naikins 2.
Oudh 1.
Streedhun 2.
Will 38.

Granduncle.

See Hindoo Law (Inheritance and Succession) 5.

Grant.

1. Where general descriptive terms such as "villages" or the like are used in a —, and both the parties have by their acts put a particular construction upon them, and rights depending on that construction have been enjoyed for many years, it lies upon those who impugn that construction to show that it is erroneous. (P. C.) 2 P. C. R. 314 (13 W. R. P. C. 31; 4 B. L. R. P. C. 36).

2. The question as to whether a — made by a zemindar before the Permanent Settlement is or is not binding on his successors, was not allowed to be raised for the first time in the appeal to the Privy Council, their Lordships inclining strongly to the affirmative of the alternative. (P. C.) 3 P. C. R. 215 (25 W. R. 3).

3. If a — be made to a man for an indefinite period, it enures, generally speaking, for his lifetime, and passes no interest to his heirs unless there are some words showing an intention to — an hereditary interest. (P. C.) 3 P. C. R. 453 (L. R. 4 I. A. 223; I. L. R. 3 Cal. 210).

4. If the words in a sunnud "You are my sister; I accordingly — to you a talook for your support" had stood alone, it might have been open to question whether an absolute — or a — for life only was intended; but, coupled with the words that follow, "being in possession of the lands and paying rent according to the tahoot jumma, do you and the generations born of your womb successively (*santan sreni krame*) enjoy the same," they appear to import an absolute estate, such as would have been given had the words been "your children and grandchildren," and no inference so far arises that the donor had an English estate-tail in his contemplation. The negative words which follow, "no other heirs of yours shall have right or interest," may be read as referring to the time of the grantee's death, their effect being to make the absolute estate before given defeasible in the event of failure of issue living at the time of her death, in which event the estate was to revert to the donor and his heirs; and as that event did not occur, it was held that the grantee had an absolute estate which he could dispose of by will. (P. C.) 3 P. C. R. 537 (L. R. 5 I. A 138; I. L. R. 4 Cal. 23). *See also* (O J. Ap.) I. L. R. 4 Cal. 455.

5. If words are employed in a — which expressly, or by necessary implication, indicate that Government intends that, so far as it may have any ownership in the soil, that ownership shall pass to the grantee, neither Government, nor any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not pass, unless there are in the — such detailed provisions as show that such words are limited in their operation. I. L. R. 1 Bom. 523.

6. The meaning of the expression "— of money or land revenue," extended by Act XXIII of 1871 s. 3 to include "anything payable on the part of Government in respect of any right, privilege, perquisite, or office," is not of so wide a range as to include a — of the proprietorship of the soil, or any suit involving the rights of a proprietor of the soil. *Ib.*

7. The — of a village by Government, whether native or British, is subject to all rights against Government, whether or not the deed of — contains an exception or reservation of such rights. Government cannot, by alienating its own rights in a village, albeit that the *sunnud* purports to — the village as a whole, extinguish or affect any substantive right therein appertaining to third persons, or convey to the grantee any larger or better estate or interest than was vested in Government. I. L. R. 4 Bom. 643.

See Desai 1.
Enam 1, 2.
Hindoo Widow 54.
Illegitimate 8.
Jurisdiction 53.
Karanavan 1.
Krishnarpan.
Lease 8.
Limitation 9.
,, (Act IX of 1871) 29.
Mokurruree 9, 10.
Oudh 4.
Pension 1, 2.
Service Tenure 4.
Talook 8.
Watercourse 1.

Great Great Great Grandson.

See Hindoo Law (Inheritance and Succession) 8.

Grievous Hurt.

1. An accused struck a woman, carrying an infant in her arms, violently over head and shoulders. One of the blows fell on the child's head, causing death: *Held* that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of —. (Cr.) I. L. R. 3 Cal. 623.

2. B voluntarily caused hurt to N, who was suffering from spleen disease, knowing himself to be likely to cause —, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or without the knowledge that he was likely by his act to cause death, and caused — to N, from which N died: *Held* that B ought not to be convicted under s. 304 A of the Penal Code (Act XXVII of 1870 s. 12) of causing death by negligence, but under s. 325 of that Code of voluntarily causing —. (Cr.) I. L. R. 2 All. 766.

See Causing Death by Rash or Negligent Act 1, 2.
Compounding 1.
Jury 10.

Ground Rent.

See Trespasser 1.

Guarantee.

1. It being found that the defendant, in a contract for the purchase of cotton, used the plaintiff's name, and that the vendors sold to him on the credit of that name, and further that the defendant had the plaintiff's authority to use their name, and that their name had been used with their full concurrence in a number of transactions during nine successive days, and that they were present, or some of their agents, when this further transaction of the same kind was entered into, it appeared to the Privy Council a fair inference that they were cognizant of and allowed their name to be so used in the last transaction: *Held* therefore that they were liable, according to the custom, to the vendors; and that, if there was no actual authority at the time, the defendant's use of their name as his guarantors, and his treating them and holding them out as liable to pay on his behalf the price of this cotton, thereby authorized them, if they thought fit, subsequently to make that payment on his behalf; in other words, that they had a right to ratify the use which he had made of their name, and that they had not deprived themselves of that right by their previous conduct in, for a time, repudiating their liability. (P. C.) 3 P. C. R. 688 (L. R. 6 I. A. 238; I. L. R. 5 Cal. 421).

2. In consideration that the plaintiffs would advance a certain sum to a limited company, two of the directors

GUARANTEE (*continued*).

agreed that the plaintiffs should repay themselves the amount "from the first moneys received by them on account of the said company," and each of them agreed to hold himself personally responsible for the payment of half the amount of any deficiency of the amount realized by the plaintiffs in the manner above described. At this time the plaintiffs were the bankers of the company, and were regularly paying and receiving money for them. The plaintiffs instead of applying the first moneys coming to their hands in liquidation of the amount advanced under the —, applied such moneys towards the payment of other debts due to themselves from the company. In an action against the executrix of one of the directors: *Held* that the plaintiffs, as between themselves and the guarantors, were bound to appropriate the first receipts to the payment of the guaranteed debt, and that as they had not done this, the — was discharged. (O. J. Ap.) I. L. R. 4 Cal. 560.

See Principal and Surety.

Guardian and Minor.

1. He who sets up a charge upon a minor's estate, created in his favor by the guardian, is bound to show, at least, that, when the charge was so created, there were reasonable grounds for believing that the transaction was for the benefit of the estate. (P. C.) 2 P. C. R. 39 (10 Moo. 454).

2. Where the negotiation out of which such a transaction sprang was between a *purdah* woman acting as the guardian and manager of an infant's estate, and a keen man of business at that time a debtor to the estate, and she was induced to sign an instrument which transformed the debtor into a creditor and heavily burdened her ward's property without consideration, except the merely colorable one of the abandonment of an appeal and the promises of future advances for the purposes of litigation, of which a part at least was neither necessary nor prudent, whether she was herself defrauded or acted in collusion with the debtor, the transaction was held, in either case, to have been a fraud upon the minor. (P. C.) *Ib.*

3. Where certain minors on attaining majority sued to set aside a sale as collusive: *Held* that it was incumbent on defendants to show that they had paid the purchase-money to plaintiffs, or that the money had reached plaintiff's hands when they came of age. (P. C.) 2 P. C. R. 462 16 W. R. P. C. 22).

4. A minor, the issue of a Christian marriage, was removed from the custody and guardianship of her mother and the mother's second husband, who had become Mahomedans and contracted a Mahomedan marriage while the second husband was already the husband in Christian marriage of a living Christian wife. (P. C.) 2 P. C. R. 521 (17 W. R. 77; 10 B. L. R. 125; 14 Moo. 309).

5. Choice of a school in such a case, how to be regulated. (P. C.) *Ib.*

6. The religion of a minor must be presumed to be that of his father. (P. C.) *Ib.*

7. It is the duty of a guardian to regard the interests of his minor, but not to contest every claim against the estate of the minor, whether well or ill founded. (P. C.) 2 P. C. R. 536 (17 W. R. 117; 10 B. L. R. 35; 14 Moo. 393).

8. The purchaser of property belonging to a minor who was injured by such sale, was held not entitled to sue the vendor for damages; and the Privy Council refused to give costs to either party, considering them both *in pari delicto.* (P. C.) 2 P. C. R. 665 (18 W. R. 230).

9. In a case of attached property, a guardian was held not debarred from bringing a suit on behalf of a minor claimant (a member of a joint Hindoo family) whilst the disability of infancy continued, because it is not the policy of the law to postpone the trial of claims. (P. C.) 3 P. C. R. 236 (25 W. R. 285; L. R. 3 I. A. 7; I. L. R. 1 Cal. 226).

10. In a suit by defendant's father to recover, from the widows of the representative of the other branch of an alleged joint Hindoo family governed by the Mitacshara, possession of their late husband's share of the property, the widows were held entitled to succeed on proof of a partition under which their late husband held his share as separate property, but defendant's father, who was only presumptively the reversionary heir next in succession to them, was declared entitled to succeed upon the death of the widows. The defendant's father, however, having become insane, his wife as natural guardian of defendant during his infancy executed a *kubala* (purporting to pass half of the defendant's interest, which was then a mere expectancy, the widows being still alive) in favor of plaintiffs who, on the death of the surviving widow, sought to recover from the defendant, then of age, the property that had descended to him from the other branch of the family: *Held* that plaintiffs had failed to prove a justifying necessity for this conveyance, and that the suit must on this ground be taken to have failed, without the alternative of a remand, in the absence of explanation as to the non-production of evidence upon this material issue. (P. C.) 3 P. C. R. 734.

11. The Privy Council expressed its inability to affirm that a minor's interest in expectancy could be made the subject of a sale; still less of a sale wholly speculative, as any such sale must be, by a guardian acting, or purporting to act, on behalf of the minor. (P. C.) *Ib.*

12. Guardian *ad litem.* *See* Majority 2; Mortgage 133; *post* 24, 36.

13. On an application made on petition without suit for the appointment of a guardian of the person and property of an infant, the Court Receiver was appointed Receiver and the property was ordered to be handed over to him with liberty to him to invest the proceeds in Government paper, and the matter was referred to the Judge in Chambers for enquiring as to the proper person to be appointed guardian. (O. J.) I. L. R. 2 Cal. 357.

14. Act XX of 1864 ss. 11 and 15, taken together, show that the Collector when appointed to take charge of the estate of a minor, is so appointed in his capacity as Collector, and therefore is an officer of Government within the meaning of Act XIV of 1869 (Bombay) s. 32. I. L. R. 1 Bom. 318. *See also* I. L. R. 4 Bom. 638.

15. Two of the widows of a deceased Mahomedan sold a portion of his real estate to satisfy decrees obtained by creditors of the deceased against them as representatives. The sale-deed was executed by them on behalf of the plaintiff, a daughter of the deceased, she being a minor, in the assumed character of her guardians: *Held* that, if the plaintiff was in possession, and was not a party to, or properly represented in the suits in which the creditors obtained decrees, she could not be bound by the decrees nor by the sale subsequently effected, and she was entitled to recover her share, but subject to the payment by her of her share of the debts for the satisfaction of which the sale was effected. (F. B.) I. L. R. 1 All. 57.

16. A Court is not precluded from entertaining a fresh application for the guardianship of a minor under Act IX of 1861 s. 1, by the circumstance that a previous application of the same suit has been refused. I. L. R. 1 All. 428.

17. H being in possession of certain real property on her own account and on account of her nephew and niece, minors, of whose persons and property she had assumed charge in the capacity of guardian, sold the property in good faith, and for valuable consideration, in order to liquidate ancestral debts, and for other necessary purposes and wants of herself and the minors: *Held* that, under Mahomedan law and according to justice, equity, and good conscience, the sales were binding on the minors. I. L. R. 1 All. 533.

18. A Hindoo, who has been deprived of caste by the members of his brotherhood on account of intending, for a money-consideration, to give his infant daughter in marriage to a man both old and impotent, does not, under Hindoo law, thereby forfeit his right as guardian to the custody of such daughter. Even if there were a rule of Hindoo law which, in such a case, inflicted a forfeiture of such right, such rule could not, with reference to Act XXI of 1850, be enforced. Where accordingly, because a Hindoo had been deprived of caste for the reason above-mentioned, a person sued to have the custody of the infant himself as her guardian in lieu of her father, and as such to be declared empowered to arrange for her marriage to a suitable husband, basing his suit on Hindoo law: *Held* that such suit was not maintainable, and that the Lower Courts properly refused to cause the intended husband to be medically examined as to his alleged impotency, he not being a party to the suit, and there being no provision of law authorizing such a procedure. I. L. R. 1 All. 549.

GUARDIAN AND MINOR (*continued*).

19. Where the plaintiff sued for the custody of her minor sister, as her legal guardian under Mahomedan law: *Held* that the fact of the plaintiff being a prostitute was, although she was legally entitled to the custody of such minor, a sufficient reason for dismissing the suit in the interests of such minor. I. L. R. 1 All. 598.

20. Where the ancestral trade of a Hindoo was carried on after his death for the benefit of his children by their guardian, and debts were incurred by the firm in the course of business: *Held* that the guardian of a Hindoo minor is competent to carry on an ancestral trade on behalf of the minor, and that, following the analogy of the rule laid down by Act IX of 1872 s. 247 as to the liability of a minor admitted by contract into a partnership business, the minor is not to be held personally liable for the debts incurred in such trade, but that his share therein is alone liable. (O. J. Ap.) I. L. R. 3 Cal. 738.

21. No greater powers can be exercised by a *de facto* guardian who has not legally completed his right to manage a minor's estate, than can be exercised by a guardian duly appointed under Act XL of 1858, with reference to which Act his powers must be determined. I. L. R. 4 Cal. 33. *But see* 25 *post.*

22. The mother and guardian of a Hindoo minor, though not a guardian appointed under Act XL of 1858, when acting *bonâ fide* and under the pressure of necessity, may sell his real estate to pay ancestral debts and to provide for the maintenance of the minor. I. L. R. 4 Cal. 76.

23. The natural father of a minor who has been adopted into another family is not by Hindoo law his proper guardian when either of the adopted parents is living and willing to act as guardian. The residence of the minor with the adoptive parents is a part of the consideration for their adoption of a son; and, unless serious illtreatment or incompetency on their part be proved, they and the survivor of them are the proper guardians. I. L. R. 3 Bom. 1.

24. Act XX of 1864 is not superseded by Act X of 1877. Where, therefore, a widow claimed to have charge of property in trust for her minor sons, it was held necessary, under Act XX of 1864 s. 2, that she should obtain a certificate of administration, if the whole estate were of greater value than Rs. 250, and that it was competent to the Court, if there were any pressing necessity (owing to the operation of the law of limitation) that a suit should be brought at once, to accept the plaint and stay proceedings, until the mother had obtained a certificate under Act XX of 1864. I. L. R. 3 Bom. 149.

25. The rules laid down in Act XL of 1858, from s. 18 downwards, apply only to certificated managers and to guardians appointed under the Act. S. 18 applies in terms to a manager acting under a certificate, and to such manager only; it confers on him generally the powers of the owner, but in regard to acts of alienation beyond certain limits, it requires that his acts, in order to be valid, should have the previous sanction of the Court; such provisions are altogether unsuitable to the case of a manager entirely unconnected with the Court. There is no indication whatever in Act XL of 1858 of any intention to alter or affect any provision of Hindoo or Mahomedan law as to guardians who do not avail themselves of the Act. The scope of the enactment is merely to remove legislative prohibitions, to confer expressly a certain jurisdiction, and to define exactly the position of those who avail themselves of, or are brought under, the Act, leaving persons to whom any existing rules of law apply unaffected. (F. B.) I. L. R. 4 Cal. 929. *Overruling* 21 *ante*.

On an application under s. 18 for leave to deal with the property of an infant, the Civil Court is bound to determine whether the proposed mode of dealing with it would, if sanctioned, be for the benefit of such infant; and the petition should contain all the materials required to decide that question. (*Following* I.L.R. 5 Cal. 363). I.L.R. 6 Cal. 161.

26. Where a member of a Hindoo family dies, leaving to his children only his undivided share in the joint family property, administration cannot be granted under Act XX of 1864, nor, under such circumstances, can a guardian of the persons of the minor children be appointed; but if the deceased has left any separate property, administration of such property may be granted, and a guardian may be properly appointed at the same time. I. L. R. 3 Bom. 431.

27. Under Mithila law the mother of a minor is entitled to a certificate of guardianship under Act XXVII of 1860, in preference to the father. I. L. R. 5 Cal. 43.

28. K B, a Hindoo governed by the Mitacshara law, died, leaving two sons, G P and K P, a minor, and a widow G K, the mother of K P: *Held* on applications by G P and G K respectively to obtain certificates under Act XXVII of 1860, to collect the debts due to the estate of K B, that G P alone was entitled to obtain such a certificate, and on the application of G K for a certificate to take charge of the estate of her minor son K P under Act XL of 1858, that as there was no evidence that P K was entitled to any *separate* estate, she was not entitled to such a certificate; also that if occasion should arise, a suit might be filed in the name of the minor by his mother as his next friend, without her having first obtained a certificate under Act XL of 1858, and without her having previously obtained permission from any Court. I. L. R. 5 Cal. 219.

29. The interest of a minor in a joint family estate under the Mitacshara law is not such property as can be taken charge of by a manager appointed under Act XL of 1858 s. 12; but the objection that such appointment was erroneous in law was not allowed to be taken after it had become final, there having been no appeal against it. I. L. R. 5 Cal. 425.

30. No judgment or order passed in a suit, to which a minor subject to Act XL of 1858 is a party, will bind him on his attaining majority, unless he is represented in the suit by some person who has either taken out a certificate, or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of a minor, under Act XL of 1858 s. 3, should be formally placed on the record. I. L. R. 5 Cal. 450.

31. Act XL of 1858 Chap. XXXI lays down the form in which a minor shall appear as a party, and this form should be strictly followed. *Ib.*

32. A mortgage by a person holding a certificate of administration in respect of the estate of a minor under Act XL of 1858 of immoveable property belonging to the minor, without the sanction of the Civil Court previously obtained, is void with reference to s. 18 of that Act, and Act IX of 1872 s. 23, even though the mortgage money was advanced to liquidate ancestral debts and to save ancestral property from sale in the execution of a decree. I. L. R. 2 All. 902.

33. An application for a certificate under Act XL of 1858 (which, if successful, would, in effect, prolong the minority of an infant from eighteen to twenty-one), should not be granted when the alleged minor is admittedly on the point of attaining the age of eighteen, unless under particular circumstances, as where very great weakness of mind is proved, or where it is shown that there is some absolute necessity for making such order. Any person who, being a party to proceedings taken under Act XL of 1858, is injuriously affected by an order passed thereon, is, under s. 28, entitled to an appeal. I. L. R. 6 Cal. 19.

34. The provision in Act XX of 1864 s. 11, that when the estate of a minor consists of land the Court "may" direct the Collector to take charge of the estate, is not obligatory. I. L. R. 4 Bom. 635.

35. The nazir of a Civil Court, who is appointed guardian of the estate of a minor under Act XX of 1864, is not an officer of Government within the meaning of Act XIV of 1869 (Bombay) s. 32 as amended by Act X of 1876 (Bombay) s. 76. An officer of Government, in order to come within those enactments, must be a party to a suit in his official capacity. The only officers of Government whom Act XX of 1864 contemplates as guardians of the estate of a minor in their official capacity are the Collector of the district and the public curator, appointed, as such, under Act XIX of 1841. I. L. R. 4 Bom. 638.

36. A Subordinate Judge who, under Act X of 1877 s. 456 as amended by Act XII of 1879 s. 73, appoints the Nazir or any other officer of his Court to act as guardian of a minor plaintiff or defendant in a suit in his Court, has no jurisdiction to hear it, and pass a decree against that officer as guardian *ad litem* of the minor. *Ib.*

See Abetment 2.
Acquiescence 1.

Guardian and Minor (*continued*).

Gunduck (River).

Habeas Corpus.

Half-Sister.

Half-Sister's Daughter.

Hat-chitta.

Haut.

Havalee.

Succession to the zemindaree of —. (P. C.) 2 P. C. R. 1 (2 Moo. 132.)

Heir.

Hereditary Office.

1. From the date of Act III of 1874 (Bombay) coming into force, it is not competent for a Civil Court to entertain a suit for a declaration of right to officiate as the sole representative of a branch of a Vatandar family, the Act constituting the Collector a judge for this and other purposes of the Act. I. L. R. 2 Bom. 370.

2. Since the above Act came into force, no suit will lie in a Civil Court for a declaration that a person is eligible to officiate as a hereditary officer falling within the scope of that Act. I. L. R. 2 Bom. 375.

3. Since that Act, none but representative vatandars, or their deputies or substitutes, can officiate; and the duty of determining what persons shall be recognized as representative vatandars, is vested in the Collector, whose proceeding is a judicial proceeding. *Ib.*

4. Plaintiff was the holder of the — of *Chalvadi*, or bearer on public occasions of the insignia or symbols of the Lingayat caste at Bagalkot. No fees, as of right, were appurtenant to that office, but voluntary gratuities might be given to the *Chalvadi*. In an action brought by plaintiff against defendant, as an intruder upon his (plaintiff's) office: *Held* that the action would not lie, if brought merely for the gratuities as moneys alleged to be received by defendant to the use of plaintiff; and that the plaintiff's claim to be *Chalvadi* of the Lingayat caste at Bagalkot was a caste question, within the meaning of Reg. II of 1827 (Bombay) s. 21 cl. 1. I. L. R. 2 Bom. 470.

5. Plaintiff sued for a declaration of his right to take a cupola to a certain temple and to place it upon the car of the idol, and to take a bamboo with tom-toms from his house to the temple, and to offer the first cocoanut to the idol at the annual festival held in honor of a certain Lingayat saint: *Held* that the suit was not maintainable, as it was brought to vindicate plaintiff's right, not to a —, but to a mere dignity unconnected with any fees, profits, or emoluments. I. L. R. 2 Bom. 476.

6. The burden of proving that the *vatandar joshi* of a village is not entitled to officiate and take fees in the family of any particular caste, lies upon the person or persons asserting exemption. I. L. R. 3 Bom. 232.

7. The *vatandar joshi* of a village has the right to recover pecuniary damages from a person who has intruded upon his office and received fees properly payable to him; but the Court will not grant any injunction against such intruder, which would have the effect of forcing upon any section of the community the services of a priest whom they are unwilling to recognize, and forbidding them to employ a priest whose ministrations they desire. *Ib.*

8. A decree made in 1863 declared plaintiff to be a hereditary deputy *vatandar* of a certain *deshpande vatan*, and, as such, entitled to receive a certain sum annually out of the income of the *vatan*; but plaintiff was not registered and treated as "a representative *vatandar*" under Act III of 1874 (Bombay) s. 56. In 1875 plaintiff made a *durkhast* for the attachment of a certain amount belonging to the *vatan* for arrears due to him under his decree, and the money was accordingly attached. On the certificate of the Collector, however, the attachment was subsequently removed by the Lower Courts. Plaintiff appealed specially to the High Court: *Held* that the Lower Courts had no option but to raise the attachment on receiving the Collector's certificate; that as plaintiff had in 1863 established his right to be a hereditary deputy *vatandar*, he was entitled to the benefit of the above section, and that his *status* as hereditary deputy *vatandar* was a fact which neither a Revenue nor a Civil Court could properly ignore or reopen, it being *res judicata*; and that as plaintiff was

HEREDITARY OFFICE (*continued*).

not registered and treated as "a representative *vatandar*" under the above Act, although the decree of 1863 entitled him to be so registered, a Civil Court had no jurisdiction to register him as such, or to direct that he should be so registered by the Collector, but that any application for such registration should be made to the Collector. I. L. R. 4 Bom. 254.

9. The applicant held a decree, dated 28th June 1861, against I A K and another for Rs. 3,956-13-7, of which he had already recovered Rs. 2,742-4-5. On 24th December 1866, he applied to the Court of the Subordinate Judge for the attachment of the proceeds of a certain *vatan*, belonging to the judgment-debtors, in satisfaction of the balance, Rs. 1,214-9-2, due to him under the decree. On 7th February 1868 the Court attached the proceeds by a prohibitory order to the Mamlutdar. Whilst this attachment was pending, the Collector, on 13th December 1878, sent a certificate to the Court, and informed it that the proceeds of the *vatan* were not liable to attachment under Act III of 1874 (Bombay) ss 10 and 13. The certificate referred to the profits of the *vatan* which had accrued due before the passing of the Act, and also to those which had been subsequently assigned by the Collector as remuneration of the officiator. The Court, on reserving it, removed the attachment: *Held* that the Collector was authorized, by the first part of s. 10, to inform the Court by his certificate that a portion of the profits attached had been assigned by him as remuneration to the officiator, and that the Court was bound, on receiving it, to remove the pending attachment; also that the arrears due at the date of the Act, and which had not been assigned, fell within the latter part of the section. I. L. R. 4 Bom. 426.

Hereditary Right.

1. The omission of words of inheritance does not show conclusively that the sunnud was not hereditary. (P. C.) 2 P. C. R. 491 (14 Moo. 247; 11 B. L. R. 71).

2. A *polliam* is not necessarily a hereditary tenure exempt from payment of revenue. (P. C.) 2 P. C. R. 967 (21 W. R. 358; L. R. 1 I. A. 282; 14 B. L. R. 115).

See **Cazee 1, 2, 3.**
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High Court.

1. It is competent to the —, on an application for review, to delay its final decision until a doubtful question of law has been settled by a Full Bench. (P. C.) 2 P. C. R. 484 (20 W. R. 459; 14 Moo. 152; 8 B. L. R. 566).

2. Under 24 and 25 Vic. c. 104 s. 15, the — will not interfere with the decisions of the Courts below in cases in which a special appeal is forbidden by Act XXIII of 1861 s. 27, and where there is no question of jurisdiction involved. I. L. R. 1 Cal. 180.

3. The Court which under Act I of 1872 s. 167 (which applies as well to Criminal as to Civil cases) is to decide upon the sufficiency of the evidence to support a conviction, is, in a case, coming before the — under cl. 26 of the Letters Patent, the Court of Review and not the Court below. Such decision is to be come to on being informed by the Judge's notes, and if necessary by the Judge himself, of the evidence adduced at the trial. Apart from s. 167, the Court of Review has power, in a case under cl. 26 of the Letters Patent, to review the whole case on the merits and confirm or quash the conviction. (O. J. Cr.) I. L. R. 1 Cal. 207. *See* 26 *post.*

4. The application to transfer the trial of a criminal case from one District Court to another should be made, not by letter to the English Department of the —, but before the — in its judicial capacity, and should be supported by affidavit or affirmation in the usual way. (F. B. Cr.) I. L. R. 1 Cal. 219 (25 W. R. Cr. 27).

5. The — has no power, under Act X of 1875 s. 147, to order a fine to be refunded on quashing a conviction. The Court in this instance decided whether the case should be transferred under s. 147 on the notes of the evidence taken by the Magistrate at the trial. (O. J. Cr.) I. L. R. 1 Cal. 355.

6. In an application for the transfer of a case under Act X of 1875 s. 147, in which the prisoner has been convicted and is undergoing imprisonment, it is in the discretion of the — to order, for sufficient *primâ facie* cause shown, that the case be removed, without notice to the Crown. (O. J. Cr.) I. L. R. 1 Cal. 356.

7. *Semble.* A charge under ss. 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate, in convicting, should in his decision state definitely what were the particular representations and words which he found on the evidence had been exhibited and uttered. Where no such specific decision has been come to, the —, when the case has been transferred under Act X of 1875 s. 147, may either try the case *de novo*, or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained. (O. J. Cr.) *Ib.*

8. A party who has preferred an appeal to the — when the law gave him no right of appeal, is not entitled upon the hearing to ask the Court to treat it as an application for the exercise of its extraordinary jurisdiction under 24 and 25 Vic. c. 104 s. 15. I. L. R. 1 Cal. 383 (25 W. R. 222).

9. Act X of 1872 ss. 294 and 297 do not debar the — from interfering where, in cases requiring the exercise of discretion, it appears upon the face of the proceedings that the Magistrate has exercised no discretion at all, or has exercised his discretion in a manner wholly unreasonable. (Cr.) I. L. R. 2 Cal. 110.

10. Under s. 297 the — has the power of interfering with judgments, sentences, or orders of Courts subordinate to it, if there has been a material error in any judicial proceeding in such Courts, meaning thereby any error appearing on the face of a judicial proceeding resulting in an unjust order. (Cr.) *Ib.* *See post* 23, 33.

11. A charge was made against the accused of using criminal force under s. 141 Penal Code. The Police Magistrate heard the evidence for the prosecution, and without disbelieving it, decided that it did not amount to the offence charged: *Held* that, assuming that an error of law had been committed, the — had no power to issue a mandamus to commit the defendants; it was not a case where the Magistrate had declined jurisdiction; he had exercised his jurisdiction and heard the case. *Held* also that it was not a case which the — could transfer under Act X of 1875 s. 147. (O. J. Cr.) I. L. R. 2 Cal. 278.

12. The powers of interference given to the — by the above section were not intended to be exercised in the case of an acquittal by the Magistrate, but only in the case of convictions or other orders whereby a defendant is aggrieved or injured. (O. J. Cr.) I. L. R. 2 Cal. 290.

13. The — cannot interfere, under 24 and 25 Vic. c. 104 s. 15, with orders duly passed by a Magistrate under Act X of 1872 s. 518. (F. B.) I. L. R. 2 Cal. 293. *But see* (F. B.) I. L. R. 5 Cal. 7.

14. This being a proceeding under Act X of 1872 s. 297, the — refused to go into the evidence. (Cr.) I. L. R. 2 Cal. 405.

15. A suit can be brought in the — on a decree of the

High Court (*continued*).

Small Cause Court. (O. J.) I. L. R. 2 Cal. 434. *Overruled* by (O. J. Ap.) I. L. R. 5 Cal. 294.

16. No appeal lies from the order of a Judge directing a prosecution under Act IV of 1877 s. 41. (O. J. Cr.) I. L. R. 2 Cal. 466.

17. Counsel cannot claim as of right to be heard on a reference to the — under Act X of 1872 s. 296. I. L. R. 1 Bom. 64.

18. A note of the judgment of the — taken by a Deputy Registrar cannot be consulted for the purpose of explaining or adding in the construction of a decree. Where, therefore, a decree was on the face of it an ordinary decree in a partnership suit for the taking of the accounts between the partners in the usual way, the Court refused to allow the respondent to show, by reference to such a note, that what the decree meant was that he was to be credited and his partners debited with certain payments *in toto*, and not with their respective shares only. (O. J.) I. L. R. 1 Bom. 158.

19. The 4th and 5th Rules of Court of 1866 are within the powers conferred on the — by the Letters Patent of 1865; and the provisions of the Letters Patent "relating to the admission and powers of Advocates, Vakeels, and Attornies" are authorized by 24 and 25 Vic .c. 104. (F. B.) I. L. R. 1 Mad. 24.

20. An appeal having been preferred to the — against a judgment of acquittal of the Court of Session, the persons who had been acquitted were arrested by the Police and brought before the Magistrate who illegally directed that they should be detained in custody pending the decision of the appeal: *Quære* whether the — as a Court of Revision has power, under Act X of 1872 s. 297, to interfere with an interlocutory order. (F. B. Cr.) I. L. R. 1 All. 1.

21. To allow of an appeal to a Full Bench of the — against the judgment of a Division Court under the provisions of cl. 10 of its Letters Patent, there must be such a judgment on the part of all the Judges who may compose the Division Court as disposes of the suit on appeal before it. (F. B.) I. L. R. 1 All. 31. *See* 24 *post*.

22. The — is not competent, in the exercise of the powers of superintendence over the Courts subordinate to it by 24 and 25 Vic. c. 104 s. 15, to interfere with the order of a Court subordinate to it on the ground that such order has proceeded on an error of law or an error of fact. Where, therefore, on appeal by the judgment-debtor against an order confirming a sale of immoveable property in the execution of a decree, the Lower Court set aside the sale on a ground not provided by law, and the auction-purchaser applied under the above section to the — to cancel the Lower Court's order, the — refused to interfere. (F. B.) I. L. R. 1 All. 101.

23. The — is not precluded by a judgment of acquittal from exercising its powers of revision under Act X of 1872 s. 297. Such powers can only be exercised where the judgment of acquittal has proceeded on an error of law, and not where it has proceeded on an error of fact. (F. B. Cr.) I. L. R. 1 All. 139. *See* 10 *ante and* 33 *post*.

24. The appeal given to the Full Court under cl. 10 of the Letters Patent is not confined to the point on which the Judges of the Division Court differed. (F. B.) I. L. R. 1 All. 181. *See* 21 *ante*.

25. Where a Court subordinate to the — rejected an application for a review of judgment, refusing to consider the grounds of the same because the decree of which a review was sought was given by its predecessor, the —, in the exercise of its powers of superintendence under 24 and 25 Vic. c. 104 s. 15, directed such Court to consider the grounds. I. L. R. 1 All. 296.

26. The —, on a point of law, as to the admissibility of rejected evidence, reserved under cl. 25 of the Letters Patent of 1865 and Act X of 1875 s. 101, has power to review the whole case and determine whether the admission of the rejected evidence would have affected the result of the trial; and a conviction should not be reversed unless the admission of the rejected evidence ought to have varied the result of the trial, according to Act I of 1872 s. 167. (O. J. Cr.) I. L. R. 2 Bom. 61. *See* 3 *ante*.

27. The — will not, under 24 and 25 Vic. c. 104 s. 15, interfere in the judgments, decrees, or orders of the Lower Court on the bare ground that they are erroneous at law, or are based upon a wrong conclusion of facts. There must be some special ground justifying the — to exercise such powers. Where the applicant has a remedy by regular suit, the — is reluctant to interfere. I. L. R. 3 Cal. 243.

28. Where, without asking the opinion of the Assessors, a Court of Session acquitted an accused person after his defence had been heard: *Held* that such omission, although a serious irregularity, was not such an error or defect in the proceedings as was, with reference to Act X of 1872 ss. 283 and 300, a ground for revisional interference. (Cr.) I. L. R. 1 All. 610.

29. The —, in the exercise of its extraordinary jurisdiction, cannot, in criminal matters, interfere, unless all other remedies provided by law have been previously exhausted. Therefore, where parties who had been convicted of riot by a Magistrate, and who having a right of appeal to the Sessions Court, instead of doing so, moved the — under cl. 15 of the Charter, the — would not interfere until that remedy had been resorted to. (Cr.) I. L. R. 3 Cal. 573. *See also post* 36.

30. In all suits instituted before Act X of 1877 came into force, in which an appeal lay to the High Court under Act VIII of 1859, an appeal still lies notwithstanding the repeal of that Act by Act X of 1877.

Per Garth C.J. A suit is a "judicial proceeding," and the words "any proceeding" in Act I of 1868 s. 6 include all proceedings in any suit from the date of its institution to its final disposal, and therefore include proceedings in appeal. The word "procedure" in Act X of 1877 s. 3 has not the same meaning as the word "proceedings" in the above-mentioned section. The proceedings in a suit instituted before Act X of 1877 came into force, including a special appeal if the old Code allowed one, go on to the end of the suit notwithstanding the repeal of the old Code. The "procedure," *i.e.* the machinery by which those proceedings are conducted, is, after decree, to be that provided by the new Code.

Per Jackson J. The word "decree," as defined in Act X of 1877, does not include "orders," either original or appellate, upon matters arising in the course of a suit or in execution of a decree. The power of the — to hear appeals from the Civil Courts in the interior is regulated by Act VI of 1871. Act I of 1868 s. 6 covers proceedings taken in execution of decree which have been commenced before Act X of 1877 came into force.

Per Markby, Mitter, and Ainslie J.J. Cl. 16 of the Letters Patent of 1865 empowers the — to hear appeals in all cases in which an appeal lay under Act VIII of 1859. (F. B.) I. L. R. 3 Cal. 662. *See also* (F. B.) I. L. R. 2 Bom. 148, (F. B.) I. L. R. 1 All. 668, I. L. R. 4 Cal. 825.

31. *Quære* whether, where a person has been convicted by a Deputy-Commissioner invested under Act X of 1872 s. 36, and sentenced to a term of imprisonment requiring under that section to be confirmed by the Sessions Judge to whom such Deputy-Commissioner is subordinate, and such sentence has been confirmed accordingly, an appeal lies to the — against such conviction and sentence. (Cr.) I. L. R. 2 All. 53.

32. No appeal was held to lie from a decision upon the settlement of issues that a certain *hibbanama* relied upon by the appellants was invalid. *Per* Garth *C. J.* The word "judgment" in cl. 15 of the Letters Patent of 1865 means a judgment or decree which decides the case one way or the other in its entirety, and not a decision or order of an interlocutory character which merely decides some isolated point not affecting the merits or result of the entire suit. *Per* Markby *J.* The matter is one more of convenience and procedure than strict law. (O. J. Ap.) I. L. R. 4 Cal. 531.

33. In the course of a serious riot one S was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge, believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the deceased praying the — to exercise its powers of revision: *Held* (1) that under Act X of 1872 s. 297 the — may exercise its powers of revision upon information in whatever way received; (2) that it was not intended that the powers given by cl. 1 of that section should be exercised only in the particular instances of error and in the particular manner given in the succeeding clauses, which are merely intended to show the particular course to be taken in those particular cases; (3) that it is not a ground of revision by the — that all the evidence

HIGH COURT (*continued*).

for the prosecution which might have been brought before the Sessions Judge was not brought before him; (4) that the words "material error" in that section must be held to include error in the appreciation of evidence; and (5) that under cl. 1 of the section the — cannot set aside findings of fact except in case of an appeal from a conviction. (Cr.) I. L. R. 2 Mad. 38.

Great laxity in weighing and testing evidence is a material error in a judicial proceeding within the meaning of s. 297.—(Cr.) I. L. R. 2 All. 336. *See ante* 10, 23.

34. The — cannot, under Act X of 1872 (s. 297 or any other section), interfere with an improper acquittal, except on an appeal by the Government. (Cr.) I. L. R. 3 Bom. 150.

A private prosecutor can move the —, in the case of an acquittal, to exercise its powers of revision under s. 297. (Cr.) I. L. R. 2 All. 448.

35. The provision of the Letters Patent of 1865 cl. 36, that when the Judges of a Division Bench are equally divided in opinion, the opinion of the senior Judge shall prevail, has been superseded by Act X of 1877 s. 575 (which is extended to miscellaneous proceedings of the nature of appeals by s. 647 of that Act) so far as regards cases to which s. 575 is applicable. (F. B.) I. L. R. 3 Bom. 204.

36. Where there is a Court of Appeal, resort should be had thereto before application is made to the — for the exercise of its powers of revision. (Cr.) I. L. R. 2 All. 276. *See also* 29 *ante*.

37. *Quære* whether the issue by the Magistrate of a proclamation under Act X of 1872 s. 416 is a "judicial proceeding" within the meaning of s. 297. (Cr.) *Ib.*

38. A suit for an account and for other relief relating to immoveable property situated without the local limits of the ordinary original civil jurisdiction of the —, was instituted against several defendants in the Court of the Subordinate Judge of the district within which the property was situated. Upon a petition by one of the defendants, consented to by most of the other defendants and by the plaintiff, the — ordered the suit to be removed from the Court in which it had been instituted, to be tried and determined by the — as a Court of Extraordinary Original Jurisdiction on the grounds that the parties and the witnesses resided in Calcutta, that it would be cheaper to try the suit in Calcutta, and that all parties appearing on the motion desired a transfer. (O. J.) I. L. R. 5 Cal. 766.

39. A Court of Session, after it had asked the assessors their opinion in a case which was being tried by it, suspended the trial of the case and made a reference to the — under Act X of 1872 s. 296, on a question of jurisdiction which had arisen in the trial of the case: *Held* that it was not intended that that section should be so used, and the Court of Session must dispose of such question itself. (Cr.) I. L. R. 2 All. 771.

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Will 1, 4, 10, 10*a*, 27, 31, 34, 35, 36, 47, 57, 60, 62.

Hindoo Law.

1. Extent of authority to be given to the opinions of Pundits, laid down. (P. C.) 2 P. C. R. 135 (10 W. R. P. C. 17 12 Moo. 397; 1 B. L. R. P. C. 1).

2. The Viromitrodataya is properly receivable as an exposition of what may have been left doubtful by the Mitacshara, and is declaratory of the law of the Benares School. (P. C.) 2 P. C. R. 159 (10 W. R. P. C. 3; 1 B. L. R. P. C. 44; 12 Moo. 448). *See also* 3 P. C. R. 765 (L. R. 7 I. A. 115); I. L. R. 3 Bom. 369.

3. It is entirely opposed to the spirit of the — to allow the words of the law to control its long-received interpretation as practically exhibited by rules of descent and rules of property founded on the decisions of the Courts of the country. (P. C.) 2 P. C. R. 474 (14 Moo. 192; 10 B. L. R. 1).

4. The institutes of Manu, the Mitacshara, and the Mayukha, although of great authority in the Presidency of Bombay, are all subject to the control of law and usage. No one of them is, as a whole, in full force in any part of

HINDOO LAW (*continued*).

the Presidency. In all of them there are precepts, which, if they ever were practical law, have, for a time beyond the memory of living men, been obsolete. (F. B.) I. L. R. 2 Bom. 388.

Semble the law of the Mayukha should prevail in the Northern Konkan. I. L. R. 3 Bom. 353.

6. Usages of the Gentoos. *See* Custom 2.

See Arbitration 20.
Assignment 3.
Custom 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13.
Divorce 3.
Endowment.
Guardian and Minor 18, 25.
Hindoo Law (Adoption).
,, ,, (Alienation).
,, ,, (Coparcenary).
,, ,, (Inheritance and Succession).
,, ,, (Migration).
,, ,, (Religious Ceremonies).
Hindoo Widow.
Husband and Wife 6.
Interest 9, 12, 23.
Landlord and Tenant 10.
Lease 7, 8.
Maintenance 8.
Manager 1, 2.
Marriage 10, 11.
Mitacshara.
Mithila.
Mortgage 107.
Vendor and Purchaser 4.
Will 47.

Hindoo Law (Adoption).

1. Power of a childless Hindoo widow to adopt a son to her husband, with or without his permission, under the various schools of Hindoo law, considered. The difference between them relates rather to what shall be taken to constitute in cases of necessity evidence of authority from the husband, than to the authority to adopt being independent of the husband. (P. C.) 2 P. C. R. 135 (10 W. R. P. C. 17; 12 Moo. 397; 1 B. L. R. P. C. 1).

2. According to the law prevalent in the Dravada country, a Hindoo widow, not having her husband's express permission, may, if duly authorized by his kindred, adopt a son to him. Rule indicated as to the kinsmen whose consent is essential. (P.C.) *Ib.*

The permission must be given by some one within the undivided family, and having a direct interest in the estate, and not by a distant relative. (P.C.) 3 P. C. R. 263 (25 W. R. 291; L. R. 3 I. A. 155; I. L. R. 1 Mad. 69).

There should be such proof of assent on the part of the *sapindas* as should be sufficient to support the inference that the adoption was made by the Hindoo widow, not from capricious or corrupt motives, or in order to defeat the interest of this or that *sapinda*, but upon a fair consideration, by what may be called a family council, of the expediency of substituting an heir by adoption to the deceased husband. (P.C.) 3 P. C. R. 353 (26 W. R. 21; L. R. 4 I. A. 1; I. L. R. 1 Mad. 174).

3. When a widow adopts a son under the authority of her husband, such authority must be strictly pursued. The son adopted is adopted to the husband, and not to the widow; and an adoption by the widow alone would not, for any purpose required by the Hindoo law, give to the adopted child, even after the widow's death, any right to the property inherited by her from her husband. (P.C.) 2 P. C. R. 219 (12 W. R. P. C. 1; 2 B. L. R. P. C. 101; 12 Moo. 350).

4. In a case of alleged adoption by deed of gift of a son as *paluk pootro*, it was held that the terms of the deed did not import the adoption of a son by gift, and that it was only by reason of the gift that the filial relation to the natural father was extinguished, or the right of the son to the estate of the giver ceased. (P.C.) 2 P. C. R. 257 (12 W. R. P. C. 29; 3 B. L. R. P. C. 27; 13 Moo. 85).

5. The Privy Council in this case, in the absence of strong documentary evidence confirmatory of an adoption, reversed the judgment of the High Court upholding the adoption, and confirmed that of the Judge below who saw and heard the witnesses in support of the adoption, and considered them unworthy of credit. (P.C.) *Ib.*

6. The mere circumstance that a deed of adoption is not registered, is no ground why the adoption should not be believed. (P. C.) 2 P. C. R. 383 (15 W. R. P. C. 12; 6 B. L. R. 501).

But registration of deeds giving power to widows to adopt, recommended. (P. C.) 2 P. C. R. 608 (18 W. R. 221).

7. Case of adoption under a will which was put forward shortly after testator's death, and not questioned until 27 years after it had been recognised by the whole family. (P. C.) 2 P. C. R. 422 (15 W. R. P. C. 41; 7 B. L. R. P. C. 216; 14 Moo. 67).

8. Where the presumption against an adoption arising from the widow's neglect to adopt for 6 or 7 years after the husband's death was considered not so great as the presumption arising from the husband's power to adopt. (P. C.) 2 P. C. R. 608 (18 W. R. 221).

9. Neither a man, nor his widow, can adopt a son while an adopted son is still living. (P. C.) 2 P. C. R. 752 (19 W. R. 12; 11 B. L. R. 391; L. R. I. A. Sup. 131).

10. Where the deeds in form were not mere arguments to give and take, but deeds of gift and adoption where interchange was not necessary, the Privy Council held that, if the father gave or was willing to give the child, plaintiff had no right to sue for a declaratory decree on the ground that the deeds were null and void because of the non-performance of certain religious ceremonies; that the High Court ought not to have decided the issue as to actual delivery of the child when that issue had not been tried by the Lower Appellate Court; that the deeds were not actually necessary to render the adoption valid; and that the adoption could have been proved *aliunde*. (P. C.) 2 P. C. R. 774 (19 W. R. 133; 11 B. L. R. 171; L. R. I. A. Sup. 149). *See* 3 P. C. R. 719. (L. R. 7 I. A. 24; I. L. R. 5 Cal. 770.)

11. Where a Hindoo widow had adopted a son in pursuance of an alleged authority by her late husband, and her mother-in-law sued to set aside the adoption as invalid, and the case turned entirely upon the genuineness of the authorisation, the Privy Council declined, in the absence of plaintiff's own evidence in support of her suit, to set aside the High Court's decision in favor of defendant. (P.C.) 3 P. C. R. 252 (25 W. R. 235; L. R. 3 I. A. 72; I. L. R. 1 Cal. 289).

12. The legal prohibition against a disqualified proprietor making an adoption without the consent of his guardians extends to an authority to adopt, but is confined to the proprietors of estates under the Court of Wards, and does not apply to other proprietors who have attained to the age of discretion. (P. C.) *Ib.*

13. Defects in evidence relating to the execution of a deed authorising adoption, where the intention to grant such authority has been proved or may be assumed, are less material than defects in evidence of a testator's knowledge of the effect of dispositions of his property made by his will. (P. C.) *Ib.*

14. Where the widow of a zemindar claimed her husband's estate on behalf of an adopted son, putting in a document authorizing her to adopt, alleged to have been executed by her late husband; and the rival claimant was a half-brother of the deceased who would have inherited the estate but for that document, but who was shown to have been on bad terms with the deceased during his life time: the Privy Council, dealing with the document as one that bore a genuine signature and was supported by antecedent probabilites, declared in favor of plaintiff's claim. (P. C.) 3 P. C. R. 263 (25 W. R. 291; L. R. 3 I. A. 155; I. L. R. 1 Mad. 69).

15. Where an estate descends to the natural-born son of the original zemindar, and on the death of the son, the widow of the original zemindar takes it as mother and heiress of her son and not immediately from her husband, the widow may adopt a son to her husband. (P. C.) 3 P. C. R. 353 (26 W. R. 21; L. R. 4 I. A. 1; I. L. R. 1 Mad. 174).

16. According to the law of the Benares School, the

HINDOO LAW ADOPTION (*continued*).

omission to adopt a brother's son does not invalidate an adoption otherwise regularly made, so as to destroy the civil *status* of the person thus adopted even after years of recognition; the maxim *Quod fieri non debuit factum valet*, though not recognised by other schools in the same degree as in Bengal, is not applicable to Bengal only. (P. C.) 3 P. C. R. 499 (L. R. 5 I. A. 40; I. L. R. 3 Cal. 587).

17. The right of Jains to be governed by their own peculiar customs and usages, when they are, by sufficient evidence, capable of being ascertained and defined, and are not open to objection on the ground of public policy or otherwise, was admitted in the case of an adoption made by a widow of her grandson, without any authority expressly derived from her deceased husband, and without the consent of his kindred, which adoption would be invalid by the ordinary —. (P. C.) 3 P. C. R. 529 (L. R. 5 I. A. 87; I. L. R. 1 All. 688). *See also* 3 P. C. R. 572 (L. R. 6 I. A., 15; I. L. R. 4 Cal. 744).

18. Where, at the suit of the collateral heirs, an adoption by a Hindoo widow in the Dattaka form was, according to the Mithila law, declared void, the Privy Council, in affirming that decision, thought it would be an inconvenient precedent to alter the decree by inserting the words "as against the reversionary heirs of the husband" after the word "void," since the decree could only be binding as between the plaintiffs and the defendants in the suit and could not affect the interests of the defendants as between themselves. (P. C.) 3 P. C. R. 600.

19. The Privy Council saw no reason for the High Court's reversal of the judgment of the subordinate Judge in disallowing a conditional adoption set up by the defendant (without any writing in support of it and without offering himself as a witness) whereby the defendant was adopted upon the condition that his adoptive father's widow should enjoy the property for life, and that his daughters, the plaintiffs, should take his self-acquired property after her death. (P. C.) 3 P. C. R. 612.

20. In a suit brought on behalf of respondent as heir to his adoptive father, by virtue of an adoption by his widow after his death, to set aside various dispositions of the property made by the widow before the adoption, the defence was that respondent had been adopted upon the faith of an express written agreement by his father, subsequently ratified by himself when he became of age, that none of the transactions were to be disputed: *Held* that the agreement of the natural father was not void, but was, at the least, capable of ratification when his son came of age, and that the son had so ratified it. (P. C.) 3 P. C. R. 663 (L. R. 6 I. A. 196; I. L. R. 2 Mad. 91).

21. The previous setting up by a Hindoo widow of a written authority from her late husband to adopt, which really never existed, was held not to prevent her from falling back upon a verbal permission to adopt, nor to affect the credit of the witnesses who now speak to the alleged exercise of it by her. (P. C.) 3 P. C. R. 719 (L. R. 7 I. A. 24; I. L. R. 5 Cal. 770).

22. Amongst Soodras in Bengal, no ceremonies are necessary to the validity of an adoption in addition to the giving and taking of a child in adoption. (P. C.) *Ib.*

23. Where there was no sufficient evidence to show that a Hindoo widow had applied to a kinsman to give his assent to her adopting his son without the authority of her late husband, but rather that she had applied to him to give his son to be adopted by her under an authority which she had from her husband when she had no such authority; and where the kinsman did not give his consent to an adoption merely, but stipulated with the widow that, if she adopted his son, he was to become guardian of the child, by which arrangement not only would he, as a member of the joint family, really get, during the minority, the management of and the interest in five-eighths of the estate, instead of being entitled, in the absence of an adoption, to only one-fourth of the property; but the adopted son was to take no interest in that portion of the estate which the assenting kinsman then claimed as his separate property: *Held* that the assent was not one which rendered the adoption valid and binding as against the kinsman's brothers. (P. C.) 3 P. C. R. 740 (L. R. 7 I. A. 173).

24. *Quære* whether the adoption of a child of a half-sister's daughter is valid. (P. C.) *Ib.*

25. Where the question was whether or not an adoption in the Kritima form had been proved, the Privy Council inclined to think the evidence against the adoption somewhat more credible than that in its favor, coupled with the circumstance that the widows appear to have remained in possession of the estate after the death of their deceased husband, and had paid income-tax on the property, and that after the death of the junior widow, on the application of the other widow for a mutation of names, the authorities were satisfied that she was in possession. (P. C.) 3 P. C. R. 753.

26. The Privy Council saw no reason to differ from the conclusion of the High Court that the intention of the parties at the time of their execution of the deeds of gift and acceptance was that the adoption was not complete; but that the execution of them was to be a mere step towards a complete and full adoption. (P. C.) 3 P. C. R. 812 (L. R. 7 I. A. 250).

27. The mode of giving and taking a child in adoption continues to stand on Hindoo law and on Hindoo usage. There cannot be such a giving and taking as is necessary to satisfy the law, even in a case of Soodras, by mere deed, without an actual delivery of the child by the father; and it would seem that, according to Hindoo usage, which the Courts should accept as governing the law, the giving and taking in adoption ought not to take place by the father handing over the child to the adoptive mother, and the adoptive mother declaring that she accepts the child in adoption. (P. C.) *Ib.*

28. A Hindoo testator died, leaving all his property to P and B his two sons absolutely, in equal shares. B died in 1845, leaving a minor son K. P died in 1851 without male issue, leaving a widow B D and a daughter. P also left a will, by which he gave, subject to certain trusts for the worship of the family idols, all his property to his widow B D for her life, and on her death to his daughter's son (if any); the daughter died without issue before her mother. B D died in October 1864, leaving a will, of which she appointed her brother G executor; and G, in accordance with the direction in her will, took possession of the property which B D took as widow and under the will of P. K died in 1855 when still a minor, leaving a minor widow, and having made a will by which he gave permission to his widow to adopt a son. The widow of K adopted a son in August 1876. In a suit brought by the plaintiff as adopted son of K and heir of P to recover the property left by P, the issue was raised whether, assuming the plaintiff to be the legally adopted son of K, he was the heir of P: *Held* that his adoption not having taken place when the succession to the property of P opened out on the death of B D, he was not entitled to the property; that his adoptive mother could not claim on the death of B D to hold the property as trustee for the plaintiff; and that, inasmuch as the property must have vested in someone on the death of B D, and property once vested cannot, by Hindoo law, be divested, the plaintiff was not entitled to succeed. (O. J.) I. L. R. 2 Cal. 295.

29. Adoption of eldest son. *See* Endowment 28.

30. The sanction of Government to an adoption by a Kulkarni or his widow, or by a coparcener in a kulkarniship or his widow, is not necessary to give it validity; nor has Government any right to prohibit or otherwise intervene in such adoption. I. L. R. 1 Bom. 607.

31. The adoption of the mother's sister's son is valid among Soodras. The rule prohibiting the adoption of one with whose mother, in her maiden state, the adopter could not have legally intermarried, is not binding on Soodras. I. L. R. 1 Mad. 62. *See also* I. L. R. 6 Cal. 41.

32. An adopted son, under the Dattaka Mimansa and Mitacshara, succeeds to property to which his adoptive mother succeeded as the heiress of her father. (F. B.) I. L. R. 1 All. 255. *See also post* 43, 44.

33. The question of the validity of an adoption (the parties between whom the question arose being Jains) was decided in accordance with the law of that sect, and not in accordance with Hindoo law. I. L. R. 1 All. 288.

34. Under Jain law, the adoption of a sister's son is valid. *Ib.*

35. It is not a necessary consequence of the circumstance that the spiritual motive for adoption, which exists among higher castes of Hindoos, has no influence upon the Talabda Koli caste, that its members may not lawfully adopt. I. L. R. 2 Bom. 67.

HINDOO LAW (ADOPTION) (*continued*).

36. Where a member of the Talabda Koli caste of Hindoos, by an express promise to settle his property upon the boy, induced the parents of the defendants to give him their son in adoption, but died without having executed such settlement: *Held* that the equity to compel the heir and legal representative of the adoptive father specifically to perform his contract, survived; and that the property in the hands of his widow was bound by that contract. Therefore when the widow of the adoptive father, nearly 30 years after his death, gave effect to his undertaking by executing a deed of gift of his property in her hands in favor of the adopted son: *Held* that such alienation was valid as against the next heir by blood of the adoptive father, and that he could not, on the death of the widow, avail himself of the plea of limitation which she had waived. *Ib.*

37. The adoption of an only son is invalid according to the Bengal School of Hindoo law; and the prohibition applies as well to Soodras as to the higher castes. (O. J. Ap.) I. L. R. 3 Cal. 443. *But see post* 40.

38. According to the Hindoo law prevailing in Bombay, a wife is not competent to give her son in adoption against the will, express or implied, of her husband, the father of that son, or under circumstances from which the husband's dissent can be inferred. I. L. R. 2 Bom. 377.

39. Where the natural father of the son given in adoption wrote to the mother, a widow, giving his consent to the adoption on certain conditions: *Held* that a non-fulfilment of one of the conditions rendered the adoption invalid, notwithstanding that the condition was unnecessary, and imposed in consequence of a mistake as to the necessity for the assent of Government to the adoption. *Ib.*

40. The adoption of an only son cannot, according to Hindoo law, be invalidated after it has once taken place. (F. B.) I. L. R. 2 All. 164. *But see* 37 *ante.*

41. It is a general rule and fundamental principle amongst Brahmins, Kshatryas, and Vaishyas, that they are absolutely prohibited from, and incapable of, adopting a daughter's or sister's son or son of any other woman whom they could not marry by reason of propinquity. The burden of proving a special custom to the contrary amongst any members of these three regenerate classes, prevalent either in their caste or in a particular locality, lies upon him who avers the existence of that custom. Limits within which the maxim *quod fieri non debuit factum valet* applies, pointed out. I. L. R. 3 Bom. 273. *See also* I. L. R. 6 Cal. 41.

Following the above, it was held that, amongst Brahmins, the adoption of a daughter's son is incestuous and invalid, and cannot be supported on the authority of the maxim *factum valet quod fieri non debuit.* I. L. R. 3 Bom. 298.

42. Where an adoption of a son has once been absolutely made and acted on, it cannot be declared invalid or set aside at the suit of the adoptive father. I. L. R. 2 All. 366.

43. The rights of an adopted son, unless curtailed by express texts, are in every respect similar to those of a natural born son. The adopted son succeeds to the *sapinda* kinsmen of his father, and as regards the relationship of *sapinda*, there is no difference between the adopted and the natural born son. I. L. R. 5 Cal. 615. *See also* 45 *post* and 32 *ante.*

44. A grandnephew may be validly adopted under Hindoo law. I. L. R. 6 Cal. 41.

45. According to Hindoo law, an adopted son takes by inheritance from the relatives of his adoptive mother in the same way as a legitimate son. (F. B.) I. L. R. 6 Cal. 256.

46. An adopted son is not precluded from inheriting the estate of one related lineally, although at a distance of more than three generations from the common ancestor. I. L. R. 6 Cal. 289.

47. In a suit by the deceased's father's brother's daughter's son against the widow of the deceased and her alleged adopted son, to set aside the adoption and a decree declaratory thereof alleged to have been obtained by the defendants by fraud and collusion: *Held*, overruling the decision of both the Courts below, that the suit must be dismissed, plaintiff being a contingent remote reversionary heir who had neither alleged nor proved that there were no nearer reversionary heirs in existence, or that they had precluded themselves from suing. (P. C.) L. R. 8 I. A. 14.

48. The right to bring such a suit is limited, and, as a general rule, belongs to the presumptive reversionary heir. (P. C.) *Ib.*

49. It appearing that the plaintiff was an Oudh talookdar, and that the widow was entitled to an under proprietary tenure upon his estate, and by her adoption had purported to transfer such under tenure: *Held* that plaintiff had not by virtue of his talookdaree such a reversionary interest in the under tenure as would entitle him to bring this suit. (P. C.) *Ib.*

See Certificate 3, 7, 10.
Declaratory Decree 11.
Estoppel 4, 17.
Guardian and Minor 23.
Limitation (Act XIV of 1859) 22.
,, (Act IX of 1871) 1, 75.
Naikins 1.
Partition 23*a*.
Practice (Appeal) 30.
Relief 2, 4.
Sale (in Execution of Decree) 8.
Will 17.

Hindoo Law (Alienation).

1. In a suit to set aside a sale of ancestral property by a minor's father as made without necessity and enquiry, defendants pleaded pressure under a foreclosure suit on account of a demand under a former mortgage for an ancestral debt. Plaintiff, having failed to establish his case, was not allowed to go back and open the consideration for the mortgage made 22 years ago. (P. C.) 2 P. C. R. 519 (17 W. R. 106).

See Ancestral Property 3, 4.
Death 1.
Endowment 20, 21, 22.
Gift 11, 16.
Guardian and Minor 10, 11.
Hindoo Law (Adoption) 20, 36.
,, ,, (Coparcenary) 14*a*, 19.
(Inheritance and Succession) 36, 40.
,, Widow 1, 3, 5, 6, 12, 14, 19, 20, 36, 38, 51, 57, 61, 62.
Husband and Wife 8, 17, 18.
Illegitimate 3.
Limitation (Act IX of 1871) 75.
Streedhun 2, 3.
Zemindaree 5.

Hindoo Law (Coparcenary).

1. The presumption of Hindoo law, as to a joint undivided family, is that the whole family property is joint, and the *onus probandi* is on any party claiming any part of such property as separate property. (P. C.) 2 P. C. R. 13 (6 Moo. 53). *See also* 3 P. C. R. 685 (L. R. 6 I. A. 233).

The cesser of commensality qualifies this presumption (P. C.) 2 P. C. R. 591 (18 W. R. 69; 14 Moo. 412).

2. A Hindoo family may separate and then re-unite; part also may re-unite, and such re-united members may impress on their re-united property by common family consent such trusts as their law will support. (P. C.) 2 P. C. R. 296 (13 W. R. P. C. 14; 4 B. L. R. P. C. 16).

3. By the common law of Hindostan the descent is in coparcenary where no other custom or right is proved. The fact that a settlement was made by the Government in the name of an elder son, and that he has continued to be solely registered ever since, affords no conclusive evidence against the title of the younger brother in property which was once his father's. (P. C.) 2 P. C. R. 381 (15 W. R. P. C. 10; 13 Moo. 542; 6 B. L. R. 232).

4. Where R's title to two lots which were no part of the zemindaree which was the principal family estate, was held

HINDOO LAW (COPARCENARY) (*continued*).

to be the same as his title to the zemindaree, the burden of proof lay on those who insisted that the two lots did not form part of the joint family estate. (P. C.) 2 P. C. R. 805 (19 W. R. 231).

5. Notwithstanding anything contained in Act I of 1845 s. 21, the the members of a joint Hindoo family may sue to enforce rights acquired by them under a purchase, at a sale for arrears of revenue, made by the managing member in his own name but on behalf of the family, though he is the sole certified purchaser. (P.C.) 3 P. C. R. 31 (22 W. R. 199; L. R. 1 I. A. 342).

6. It is not necessary for a member of an undivided family to prove possession of a specific share of the joint fund, nor participation in the profits to the full extent of his share. It is very common among joint Hindoo families that the expenses of the family are paid out of the common fund, and that each member draws a certain sum as he requires it; but there is no account taken between the members of the family to see whether each member receives his full share. (P. C.) 3 P. C. R. 67 (14 B. L. R. 373; L. R. 2 I. A. 58).

7. Where a member of a joint Hindoo family living under the Mitacshara law died entitled to an undivided share, leaving two widows who were afterwards sued for debts incurred for his own benefit by their husband, and against whom decrees were obtained by the creditors; and one of the surviving members of the joint family sought to recover possession of the interests sold in execution of the decree against the widows: *Held* that, so far as the interests in suit were not covered by any prior lien, the surviving member was entitled to recover them from the auction-purchaser. (P. C.) 3 P. C. R. 236 (25 W. R. 285; L. R. 3 I. A. 7; I. L. R. 1 Cal. 226).

8. Where however some of the interests in question were covered by a zur-i-peshgee mortgage and the exact nature of the lien thus created had not been fully explained in the trial: *Held* that the surviving member could not recover his interests until he had satisfied this lien. (P. C.) *Ib.*

9. And where in the same suit the objection was taken that the claim would not stand because of a defect in the frame of the suit, whereby a co-sharer in the joint family property was not made a party to the suit: *Held* that, as the said co-sharer had previously been put in possession of his moiety of the property, and had put in a waiver of all further claims, and no further claimant could possibly arise, the plaintiff's suit was not prejudiced by the defect. (P. C.) *Ib.*

10. The Privy Council would require very strong and clear authority to support such a proposition as that, if a member of a joint Hindoo family receives any education whatever from the joint funds, he becomes for ever after incapable of acquiring by his own skill and industry any separate property. (P. C.) 3 P. C. R. 387 (L. R. 4 I. A. 109; I. L. R. 1 Mad. 252).

11. Under the Mitacshara law, the share of one co-sharer in a joint family estate can be taken and sold in execution of a decree against him alone. (P. C.) 3 P. C. R. 467 (L. R. 4 I. A. 247; I. L. R. 3 Cal. 198). *See also* I. L. R. 5 Cal. 425.

The above principle is applicable to the right, title, and interest of any member of the joint family, and is not confined to the interest of the father alone. I. L. R. 4 Cal. 809. *See* (F. B.) I. L. R. 2 All. 267; *Ib.* 746.

12. The purchaser of undivided property at an execution-sale during the life of the debtor for his separate debt acquires his share in such property with the power of ascertaining and realizing it by a partition. (P. C.) 3 P. C. R. 467 (L. R. 4 I. A. 247; I. L. R. 3 Cal. 198). *See also* 3 P. C. R. 589 (L. R. 6 I. A. 88; I. L. R. 5 Cal. 148; 3 P. C. R. 778 (L. R. 7 I. A. 181; I. L. R. 2 Bom. 494; I. L. R. 5 Cal. 425.

13. Held in this case that the ordinary presumption of Hindoo law applicable to a joint family (that property is ancestral and joint, not self-acquired and separate) was rebutted by the circumstances of the family; and that the *onus* of establishing the contrary, which lay on the member of the family who disputed it, had not been discharged by him. (P. C.) 3 P. C. R. 490 (I. L. R. 3 Cal. 315).

14. The impartibility of a property does not destroy its nature as joint family property, or render it the separate estate of the last holder so as to destroy the right of another member of the joint family to succeed to it upon his death in preference to those who would be his heirs if the property were separate. (P. C.) 3 P. C. R. 540 (L. R. 5 I. A. 149; I. L. R. 4 Cal. 190).

14*a*. The purchase of certain property by a member of a joint Hindoo family which was found to have never separated, was held to be a purchase, not on his own account, but for the joint family and as joint family property, and to be liable to sale in execution of a decree. (P. C.) 3 P. C. R. 685 (L. R. 6 I. A. 233).

Followed in a case where a father mortgaged a joint family estate as security for a loan for the use and benefit of the family, and the lender, in execution of a decree he obtained against the father, put up the whole estate to sale. I. L. R. 2 All. 746.

15. According to the Hindoo law as received at Bombay, a co-parcener cannot without the consent of his co-sharers, dispose of his undivided share by will. (P. C.) 3 P. C. R. 778 (L. R. 7 I. A. 181.

16. A joint family property, acquired and maintained by the profits of trade, is subject to all the liabilities of that trade. (O. J.) I. L. R. 1 Cal. 470.

17. To a suit by one member of a joint Hindoo family living under the Mitacshara law, for a specific share of the joint family property, all the members of the family are necessary parties. I. L. R. 2 Cal. 149.

18. In a suit by a member of an undivided Hindoo family to have his right declared to a portion of the joint estate which had been sold by the Civil Court in execution of a decree against his coparcener alone: *Held* that the plaintiff should have a decree declaring him entitled to a joint possession along with the execution-purchaser as tenant in common; but that if a division in *specie* were desired, a suit should be brought for that purpose. I. L. R. 1 Bom. 95. *See also* I. L. R. 2 Bom. 676.

The execution-purchaser ought not, under Act VIII of 1859 s. 269, to be put in exclusive possession of the whole undivided estate by virtue of a decree against one coparcener only. I. L. R. 2 Bom. 676.

19. A Hindoo governed by the Mitacshara law, who has two sons undivided from him, cannot, whether his act be regarded as a gift or a partition, bequeath the whole, or almost the whole, of the ancestral moveable property to one son to the exclusion of the other. I. L. R. 1 Bom. 561.

20. A plaintiff entitled on partition to half the property in the hands of his brother is bound to bring into hotchpot any ancestral property, or property acquired from ancestral funds which may be in his own hands, but not liable to account for money received by him from his father while living in commensality with him and his brother, the circumstance of such receipt not being of a kind to impute fraud. *Ib.*

21. The introduction of a stranger, in blood as auction-purchaser of a portion of the rights and interests of an undivided Hindoo family breaks up the constitution of such family as undivided, and destroys the character of such property as joint and undivided family property; and a gift subsequently made by the remaining members of the original undivided Hindoo family of their rights to a third person, without the assent of the auction-purchaser, is not invalid by reason of the principle of Hindoo law which requires the assent of coparceners in an undivided Hindoo family to give validity to such gift. I. L. R. 1 All. 429.

The member of a joint Hindoo family who alienates his rights and interests in the family property to a stranger in blood thereby incapacitates himself from objecting to a similar alienation by another member of such family of his rights and interests in such property, on the ground that such alienation was invalid without his consent; and such stranger is not competent to make such objection. I. L. R. All. 898.

22. P, an undivided Hindoo coparcener, died on 7th August 1874, leaving him surviving a brother C and a son N. N subsequently died on 2nd July 1875. In a suit brought by plaintiff against C, on a bond executed by P as surety for one R: *Held* that the family property, which on N's death became vested by survivorship in C, was not in his hands liable for the separate debts of P or N. I. L. R. 2 Bom. 479.

23. Every member of a family of proprietors who has an interest in the estate has a right to question any transactions

HINDOO LAW (COPARCENARY) (*continued*).

entered into by the elder member as manager whereby the former would be defrauded. I. L. R. 4 Bom. 29.

24. The right of a person defrauded by a contract between a manager and a third party is to have the contract altogether rescinded. *Ib.*

25. The condition of a Hindoo family is *primâ facie* joint, and, therefore, property held by the managing member of a Hindoo family is *primâ facie* joint; but as there is nothing to prevent the individual managing member from contracting debts on his own account, there is no presumption that a debt contracted by him is joint. I. L. R. 5 Cal. 321.

26. The presumption of Hindoo law that a family remains joint until a separation is proved, is not applicable where it is admitted that a disruption of the unity of such family has already taken place: a presumption under such circumstances cannot arise as to whether the other members of the family remained joint or became separate. I. L. R. 5 Cal. 474.

27. Adult members of an undivided Hindoo family governed by the law of the Dayabhaga, who have an interest in a family business carried on by the managing member of the family, and who are maintained out of the profits of such business, must, in the absence of evidence, be taken to possess the knowledge, that the business might require financing, and to have consented to such financing. Where, therefore, a managing member of such a family, in carrying on the family business, obtains an advance necessary for the purposes of the business by pledging the joint family property, the mortgage is binding on all the members of the partnership. (O. J. Ap.) I. L. R. 5 Cal. 792.

28. J, the father of the three defendants, carried on a trading firm under the name of J H. On his death the business was continued under the same name by S as eldest brother and manager of the firm. Plaintiff sued the three brothers to recover money due on an account signed by S in the name of the firm. The second defendant contended that he had never participated in the property of the business, that he had not resided at the family residence for six years, and that he could not therefore be considered a partner of the firm and liable to the plaintiff: *Held* that he could not repudiate a liability arising out of the ordinary transactions of the firm. During his father's life he was joint owner, and after his father's death he acquiesced in the continuance of the firm under the same name and ostensibly, therefore, with the same constitution. He had done no act to divest himself of his share. He had given no notice of repudiation, and made no partition, and there was nothing to prevent him from demanding his share of the partnership, or claiming share in the profits. There was, therefore, nothing to exempt him from the ordinary rule of Hindoo Law, which makes every member of an united family liable for debts properly incurred by a manager for the benefit of the family. The debt due to the plaintiff for goods supplied to the shop was properly incurred in the course of the ordinary transaction of the firm, and presumably, therefore, for the benefit of all the joint owners of the firm. I. L. R. 5 Bom. 38.

29. The rights and liabilities arising out of joint ownership in a trading business created through the operation of Hindoo law between the members of an undivided Hindoo family cannot be determined by exclusive reference to Act IX of 1872 but must be considered also with regard to the general rules of Hindoo law which regulate the transactions of united families. *Ib.*

30. An ancestral trade may descend like other inheritable property upon the members of a Hindoo undivided family. The partnership so created or surviving has many, but not all, of the elements existing in an ordinary partnership. For example, the death of one of the partners does not dissolve the partnership; nor, as a rule, can one of the partners, when severing his connection with the business, ask for an account of past profits and losses. *Ib.*

See Ancestral Property.
Arbitration 20.
Auction-Purchaser (Execution-Sale) 1.
Benamee, 1, 2, 11.
Enam 3.
See Endowment 6, 8, 9, 18, 27.
Enhancement 22.
Evidence (Documentary) 9.
Guardian and Minor 9, 10, 11, 26, 29.
Hindoo Law (Adoption) 15, 23, 30.
" " (Inheritance and Succession) 17, 21, 22, 25, 29, 31, 34, 36, 37, 39.
" " (Religious Ceremonies) 1.
" Widow 4, 17, 21, 38, 44, 45, 46, 47, 52, 53.
Joint Family 1.
Jurisdiction 54.
Limitation (Act XIV of 1859) 2, 11*a*, 18, 19, 28.
" (Act IX of 1871) 27, 38, 52, 96, 102.
Mortgage 16, 17, 72, 75, 76, 89, 98.
Naikins 2.
Oudh Estates 8, 13.
Partition 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23*a*, 24, 26, 27, 28, 29.
Partnership 6.
Privy Council 19.
Res Judicata 31, 41.
Will 2, 61.
Zemindaree 3, 5.

Hindoo Law (Inheritance and Succession).

1. Where a Hindoo family migrates from one territory to another, if it preserves its ancient religious ceremonies, it also preserves the law of succession to which it has been subject. If the family can be shown to have continued in the observance of the natural law and usages of Mithila, the rule of inheritance as established in that province must be followed, although part of the property may be locally situate in Bengal and the last proprietor may have domiciled there. (P. C.) 2 P. C. R. 1 (2 Moo. 132).

2. The Mithila law is against the claim of any relation on the mother's side until those on the father's side to the seventh degree have been exhausted; and so a maternal first cousin of the last male proprietor was held not entitled to succeed. (P. C.) *Ib.*

3. By the general law prevailing in Tirhoot, and indeed generally under the Hindoo law, estates are divisible amongst the sons when there are more than one son; they do not descend to the eldest son, but are divisible amongst all, except as to a Raj or Principality, which, in its very nature, excludes the idea of division. (P. C.) 2 P. C. R. 20 (6 Moo. 191).

4. The general law with respect to inheritance, as well as other matters, may, in the case of great families where it is shown that usage has prevailed for a very long series of years (for at least two centuries in this case), be controlled, unless there be positive law to the contrary. (P. C.) *Ib.*

5. The list of Bundhoos given in Art. I s. 6 ch. 2 of the Mitacshara is not exhaustive but illustrative; and therefore a maternal uncle or grand-uncle is a Bundhoo, and as such entitled to succeed. (P. C.) 2 P. C. R. 1. 59 (10 W. R. P. C. 31; 1 B. L. R. P. C. 44; 12 Moo. 448). *See also* 3 P. C. R. 795 (L. R. 7 I. A. 212).

6. The general rule of Hindoo law, which gives a preference as heir to the whole blood over the half blood, extends also to a Raj in the absence of evidence of family custom to the contrary. (P. C.) 2 P. C. R. 243 (12 W. R. P. C. 21; 12 Moo. 523; 3 B. L. R. P. C. 13).

7. The mere impartibility of an estate is not sufficient to make the succession to it follow the course of succession of separate estate. (P. C.) 2 P. C. R. 302 (13 W. R. P. C. 21; 13 Moo. 333. *See also* 3 P. C. R. 204 (24 W. R. 255; L. R. 2 I. A. 263; I. L. R. 1 Cal. 153).

8. Under the Mitacshara law, a great great great grandson of a common ancestor is not too remote in degree to inherit as a Gentile. (P. C.) 2 P. C. R. 330 (14 W. R. P. C. 1; 13 Moo. 373; 5 B. L. R. 293). *See also* 3 P. C. R. 142 (23 W. R. 409; 15 B. L. R. 190; L. R. 2 I. A. 163).

HINDOO LAW (INHERITANCE AND SUCCESSION) (*contd.*)

9. Questions of precedence among heirs must be settled by the principle of superior efficacy of oblations. (P. C.) *Ib.*

10. A sister and her descendants find no place in the tables of succession framed according to the Mitacshara law. (P. C.) 2 P. C. R. 474 (14 Moo. 192; 10 B. L. R. 1).

11. Apart from special custom, where there are sons by different wives, priority of birth and not of marriage must determine the succession of an impartible inheritance. (P. C.) 2 P. C. R. 603 (17 W. R. 553; 12 B. L. R. 396; 14 Moo. 570; L. R. I. A. Sup. 1).

An elder-born son, though of the junior wife, is entitled to succeed to the father's estate in preference to the younger-born son of the elder wife. (P. C.) L. R. 8 I. A. 1.

A first-born son, though by the fourth wife, is entitled to succeed to the father's estate in preference to a younger son born of the third and senior wife whose marriage was subsequent to the death of the first two wives. (P.C.) *Ib.*

12. Special usages modifying the ordinary — must be ancient and invariable and established by clear and unambiguous evidence. (P. C.) 2 P. C. R. 603 (17 W. R. 553; 12 B. L. R. 396; 14 Moo. 570; L. R. I. A. Sup. 1).

13. The distinction adopted by the English law between heritable freeholds and personalty is not known in Hindoo law. (P. C.) 2 P. C. R. 692 (18 W. R. 359; 9 B. L. R. 377; L. R. I. A. Sup. 47).

14. A gift *inter vivos* or by will cannot prevail against the —. (P. C.) *Ib.*

15. All estates of inheritance created by gift or will, so far as they are inconsistent with the —, are void as such; and no person can succeed thereunder to what is described in English law as an estate-tail. (P. C.) *Ib.*

But words giving lands to the donee, "his children and grandchildren," conferred upon him an absolute estate. (P. C.) 3 P. C. R. 537 (L. R. 5 I. A. 138; I. L. R. 4 Cal. 23).

16. Where ancestral property has apparently descended in the ordinary way of Hindoo property, first to the son and thence to the mother, it lies on those who say that it is confined to the direct descendants of the original donee to prove their case and show by some custom that that was the proper construction of the grant. (P. C.) 2 P. C. R. 802 (19 W. R. 211).

17. Accepting the High Court's finding that plaintiff had established his legitimacy, the estate, which was ancestral and presumed to be joint, was held, in the absence of a special family custom, to descend to him and his brother in equal moieties, and not to him alone by right of primogeniture. Whether plaintiff was entitled to more would depend on the general law of succession to be applied. (P. C.) 2 P. C. R. 922 (21 W. R. 89).

17*a*. There is no legal foundation for the pretension that, owing to the omission to issue a permanent sunnud, the Government of Fort St. George had, under Regs. XXV and XXXI of 1802, retained the right of nominating his successor on the death of each successive holder of the Marangapury zemindaree; but the title to the zemindaree is to be determined by the ordinary —. (P. C.) 2 P. C. R. 967 (21 W. R. 358; L. R. 1 I. A. 282; 14 B. L. R. 115). *See also* 3 P. C. R. 263 (25 W. R. 291; L. R. 3 I. A. 155; I. L. R. 1 Mad. 693).

18. According to Hindoo law, the right once vested in a daughter by inheritance does not cease until her death, notwithstanding she become barren or a widow who has not borne a son. If two sisters, upon the death of their mother, together constitute their father's heir, then upon the death of one of them, the property which descended to both jointly, survives to the other whose right of survivorship previously acquired by inheritance is not destroyed by her disqualification to inherit at that time by reason of her being a childless widow. (P. C.) 3 P. C. R. 94 (23 W. R. 214; L. R. 2 I. A. 113; 15 B. L. R. 10). *See* I. L. R. 4 Bom. 105.

So long as a daughter, not disqualified, or in whom a right of inheritance has once vested, survives, a daughter's son acquires no right by inheritance in his maternal grandfather's estate. I. L. R. 1 All. 608.

19. A Bundhoo or cognate only cannot inherit as long as there is a Sapinda or Samanodaka in existence. (P. C.) 3 P. C. R. 142 (23 W. R. 409; 14 B. L. R. 226; L. R. 2 I. A. 7). *See* 3 P. C. R. 795 (L. R. 7 I. A. 212).

20. *Quære*. Is the old rule of Hindoo law obsolete, or does it still exist, that a daughter may be specially appointed to raise a son, and the son of a daughter so appointed is entitled to succeed in preference to more distant male relatives? (P. C.) *Ib.*

21. Where ancestral property has been held according to the law of primogeniture, and the family is governed by the Mitacshara law, in the event of a holder dying without male issue, and of the family being undivided, the succession would go to the next collateral male heir in preference to the widow or daughters of the last possessor. (P. C.) 3 P. C. R. 204 (24 W. R. 255; L. R. 2 I. A. 263; I. L. R. 1 Cal. 153).

22. Though a family might be undivided, the separate property of any member would go according to the law of succession to separate estate. Whether the general *status* be joint or divided, property which is joint will follow one, and property which is separate will follow another, course of succession. (P. C.) *Ib.*

23. By the law of the Dayabhaga, a brother of the whole blood succeeds, in the case of an undivided immoveable estate, in preference to a brother of the half blood. (P. C.) 3 P. C. R. 411 (L. R. 4 I. A. 147). *Adopting* F. B. ruling in 24 W. R. 234 (I. L. R. 1 Cal. 27).

24. *Semble.* According to the law of the Benares school no preference is given to a daughter who has, or is likely to have, male issue, over a daughter who is barren or a childless widow. (P. C.) 3 P. C. R. 499 (L. R. 5 I. A. 40; I. L. R. 3 Cal. 587).

25. Held that, as between the descendants of Mutter Vaduga and Dhorai Pandian, the Palayapat of Padamattur was the separate property of the latter; that, on the death of Dhoria Pandian, has right, if he had any left undisposed of in the property passed to his widow, notwithstanding the undivided *status* of the family (the rule of succession affirmed in the Shivagunga case applying); and that plaintiff, who claimed the Palayapat as an impartible and ancient zemindaree descendible by inheritance to him on the death of Dhorai Pandian without male issue, had no title to sue in the life of Dhorai Pandian's widow. (P. C.) 3 P. C. R. 508 (L. R. 5 I. A. 61; I. L. R. 1 Mad. 312). *See also* 3 P. C. R. 540 (L. R. 5 I. A. 149; I. L. R. 4 Cal. 190); 3 P. C. R. 680.

26. Exclusion of females by the Mitacshara. *See* Custom 9.

27. Under the Mitacshara law, a widow's estate, inherited from her husband, is a limited and restricted estate only (P. C.) 3 P. C. R. 572 (L. R. 6 I. A. 15; I. L. R. 4 Cal. 744).

28. A daughter, inheriting ffom her father, does not stand in a position higher than or different from that of a widow. (P. C.) *Ib.*

29. In a suit for the recovery of the zemindaree of Vegayanimapet, it was not disputed that the zemindaree according to an ancient custom was impartible, and that though it was part of a joint family property, it had for many years been held and enjoyed by the eldest male member in the direct line, but it was found that a partition took place, that the family became divided, and that the zemindaree was allotted to the then eldest member as his separate share of the joint family property. It accordingly descended to his son, upon whose death it was held that his widow, the appellant, was entitled to succeed. (P. C.) 3 P. C. R. 680.

30. Wajib-ul-urz or village administration papers, prepared and attested by Settlement Officers or their subordinates in Oudh, were held admissible in evidence, under the Evidence Act I of 1872 s. 35, to prove that, in the Bahrulia clan, a custom exists to exclude daughters from succeeding to the inheritance of their father's estate. (P. C.) 3 P. C. R. 704 (L. R. 7 I. A. 63; I. L. R. 5 Cal. 744).

31. Where, in an undivided Hindoo family living under the Mitacshara law, a person dies without leaving issue, but leaving a brother, and a nephew the son of a predeceased brother, the latter is not excluded from the succession by the former. (F. B.) I. L. R. 2 Cal. 379.

The principle of survivorship obtains until partition; and upon a partition taking place, the distribution amongst the different members of the family is to be made not according to the ordinary —, but *per stirpes*. I. L. R. 5 Cal. 142.

32. According to the — as prevailing in Bombay, blindness, to cause exclusion from inheritance, must be congenital. Therefore, where the widow of a childless intestate, though proved to have been totally blind for some years

HINDOO LAW (INHERITANCE AND SUCCESSION) (*contd.*)

before the death of her husband, was admitted not to have been born blind : *Held* that such blindness did not prevent her from inheriting the property of her husband on his decease. (O. J.) I. L. R. 1 Bom. 177.

Incurable blindness, if not congenital, is not such an affliction as, under the Hindoo law, excludes a person from inheritance. I. L. R. 1 Bom. 557.

33. Incurable leprosy of the sanious or ulcerous type, contracted before partition, excludes a person afflicted with it from a share in the ancestral estate. I. L. R. 1 Bom. 554.

34. When, in an undivided Hindoo family living under the Mitacshara law, a brother dies without leaving issue, but leaving brothers and nephews, the sons of a predeceased brother, the interest in the joint estate of the brother so dying does not pass on his death to his surviving brothers ; but, on partition, the whole estate, including the interest of the brother so dying, is divisible ; and the right of representation secures to the sons or grandsons of a deceased brother the share which their father or grandfather would have taken, had he survived the period of distribution. (F. B.) I. L. R. 1 All. 105. *See also* I. L. R. 4 Cal. 425.

35. Property inherited from her deceased husband by a childless widow, among the Nagar Vissa Vanias, at her death intestate, devolves on the relations in blood, on the mother's side, of the husband, in preference to the heirs and next of kin of the widow. (O. J.) I. L. R. 2 Bom. 9.

36. The effect of a Hindoo son relinquishing for a sum of money his share in the property of his father, natural or adoptive, and agreeing not to claim it during or after his father's lifetime, is to place him in the position of a separated son. The relinquishment does not amount to disinherison. If, therefore, the father on such relinquishment makes an alienation of his estate, it will take effect, but otherwise his separated son will inherit in preference to his widow. I. L. R. 3 Bom. 54.

37. A son by birth or adoption can for adequate reasons be disinherited ; but the course of devolution prescribed by the law cannot be altered by a private arrangement. On the disinherison of the son, the son's son becomes his grandfather's lawful heir. *Ib.*

38. A mother, guilty of unchastity before the death of her son, is, by Hindoo law, precluded from inheriting his property. I. L. R. 4 Cal. 550.

39. When property is held in coparcenary, the share of an undivided coparcener who leaves no issue goes, according to Hindoo law, to his undivided coparceners, whether the property is ancestral, or acquired by the coparceners as joint tenants. I. L. R. 3 Bom. 151.

40. Under the —, a daughter who succeeds to an absolute and several estate in her father's immoveable property, may, if she has no issue, make a gift of that property in her lifetime or devise it by will, and her devisee is entitled to hold it against her own heirs or the heirs of her father. I. L. R. 3 Bom. 171.

41. The full sister and not the half-brother is entitled to succeed as heir to the estate of a deceased brother. I. L. R. 3 Bom. 353.

Following the above ruling, the claim of a sister of the deceased was preferred to that of the widow of his separated paternal uncle. I. L. R. 3 Bom. 368*n*.

So also it was held that, under the Hindoo law prevailing in Western India, a sister succeeds to the estate of her deceased brother in preference to a separated and remote male relative of the deceased. I. L. R. 3 Bom. 369.

So also the sister and half-sister inherit in priority to the step-mother and the paternal uncle's widow ; the law in Bombay as to the succession of a full sister being both the Mitacshara and the Mayukha ; and as the term "brothers" in the Mitacshara includes sisters, and brings them in after brothers, so the term "half-brothers" includes half-sisters, and brings them in after half-brothers. (O. J. Ap.) I. L. R. 4 Bom. 188.

A full sister is the heir of her deceased brother in preference either to his step-mother or paternal first cousin. I. L. R. 4 Bom. 210.

Also in preference to his cousin on the paternal side one degree removed. I. L. R. 4 Bom. 214.

42. It is settled law that a mother succeeding, on the death of her son, to his immoveable property, takes only such a limited estate in it as a Hindoo widow takes in the immoveable property of her husband dying without male issue, and that, on her death, her son's heir succeeds to such property. I. L. R. 3 Bom. 353.

43. The Viromitrodaya is an authority in Benares rather than in Bombay, and its doctrine (that where there has been an intervening holder between a brother and sister, or a father and daughter, the inheritance opens, and the sister and daughter are excluded, and the next male heirs come in) has not been followed in the Bombay Presidency. I. L. R. 3 Bom. 369.

44. A Hindoo of the Soodra caste died in 1850 leaving two widows, B and S, a son Mabadu and daughter Darya, the children respectively of B and S, and an illegitimate son, Sadu, the plaintiff. Sadu and Mabadu continued to live together for some time after their father's death. But subsequently, owing to domestic quarrels, they lived separately, and Sadu was allowed by Mabadu a portion of the family property under an agreement in writing. They were, however, joint and undivided in estate, and continued to be so until the death of Mabadu in 1865. In 1866 Sadu brought a suit on the agreement, and obtained a decree against B, S, Darya, and R (a lessee of B) for the property mentioned in the agreement. In 1870 Sadu brought a second suit as heir of his father and brother, and claimed the whole of the ancestral property : *Held* that, after the death of their father, Mabadu and Sadu succeeded as coparceners to the whole property, subject to the maintenance of B, S, and Darya if she were then unmarried, and in that event also to her reasonable marriage expenses ; Sadu, however, as an illegitimate son, taking only half a share. *Held* also that inequality of shares did not prevent coparcenary and succession by survivorship, and that as Mabadu and Sadu were coparceners from the death of their father until the death of Mabadu, the usual result of coparcenary followed on the occurrence of the latter event, *viz.*, the surviving coparcener (*i.e.* the plaintiff Sadu) took the whole property. (F. B.) I. L. R. 4 Bom. 37.

45. Under the Hindoo law prevailing in Bombay, a daughter is not debarred by incontinence from succession to the estate of her father. Smriti writers and commentators on Hindoo law and judicial decisions on the question of a daughter's right of succession, referred to and discussed. I. L. R. 4 Bom. 104.

46. The step-mother is not included in the Mitacshara within the term "mother." But although a step-mother cannot in the Presidency of Bombay be introduced as an heir under the term "mother," yet, as the widow of a *gotraja sapinda* of the propositus, and therefore, according to the doctrine of the Mitacshara and the Mayukha, a *gotraja sapinda* herself, she cannot be regarded as altogether excluded from the succession to a step-son. (O. J. Ap.) I. L. R. 4 Bom. 188.

47. *Quære.* At what points in the list of heirs the step-mother of the propositus, the widow of his brother, and the widow of his paternal uncle succeed in the Presidency of Bombay. (O. J. Ap.) *Ib.*

48. A Hindoo widow who had inherited the estate of her separated husband, died leaving her surviving a widowed daughter-in-law and a first cousin of her deceased husband, *i.e.*, his paternal uncle's son. In a suit brought by the daughter-in-law to recover possession of certain immoveable property left by the deceased widow : *Held* that in the Presidency of Bombay the daughter-in-law was entitled to succeed to the property in priority to the paternal first cousin of her deceased husband. I. L. R. 4 Bom. 219.

49. Comparative poverty is the only criterion for settling the claims of daughters on their father's estate. Where, therefore, two of four daughters brought suits claiming each a moiety of their father's estate to the exclusion of the two remaining daughters, and such remaining daughters resisted such suits on the ground that they were entitled to the whole estate, being poor and needy, while their sisters were rich, and it was found that such remaining daughters were, as compared with their sisters, poor and needy, the Court dismissed such suits. I. L. R. 2 All. 561.

50. A sister's daughter's son is an heir according to the Mitacshara. (F. B.) I. L. R. 6 Cal. 119.

51. The author of the Mitacshara, in chap. II sec. 5 verse 3, uses the word "sapinda" in the sense of "connection by particles of one body," and not in the sense of "connection by funeral oblations." (F. B.) *Ib.*

52. In order to determine whether a person is a "sapinda"

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of the propositus, within the meaning of the definition given by the author of the Mitacshara in Achara Kanda (chapter treating of rituals) it is necessary to see whether they are related as "sapindas" to each other, either through themselves or through their mothers and fathers. (F. B.) *Ib.*

See Ancestral Property 7.
Court Fees 8.
Custom 3, 5, 6, 9.
Death 1.
Endowment 28, 31, 37.
Estoppel 17.
Evidence 18.
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Hindoo Law (Migration).

See Hindoo Law (Inheritance and Succession) 1.

Hindoo Law (Religious Ceremonies).

1. Where a compromise gave the elder of two brothers certain lands and rents coupled with the performance of a trust of a nature constantly vested in the managing or elder brother of a joint Hindoo family, and the younger brother sued the elder brother for damages alleged to have been sustained in the performance by the younger brother at his own cost of religious ceremonies which the elder brother had undertaken under the compromise but had not performed: *Held* that, in order to have his cause of action, the younger brother must show that the non-performance of the trust was not owing to any default on his part. (P. C.) 2 P. C. R. 204 (11 W. R. P. C. 31; 2 B. L. R. P. C. 79; 12 Moo. 380).

2. In this case the High Court approved of the rejection of the plaint under Act VIII of 1859 s. 32 as disclosing no cause of action either in the allegations respecting the "mirass of reciting prayers" (in the Deveraja Swamis pagoda), and the exclusive right of recital in a stated form and order which the plaintiffs asked the Court to establish and to protect from infringement by the defendants, or in the allegation as to withholding payment of certain specified sums described as "the value of the incomes mentioned in Schedules B and C." The Privy Council, however, considered that the Schedules were more than a mere list of cakes and offerings, to which a money value was assigned, and that they disclosed a claim. (P. C.) 3 P. C. R. 620 (L. R. 6 I. A. 120; I. L. R. 2 Mad. 62).

3. A refusal to deliver up an idol, whereby the person demanding it was prevented from performing his turn of worship on a specified date, gives the party aggrieved a right to sue for damages. (O. J.) I. L. R. 3 Cal. 390.

4. In the Presidency of Bombay a village priest can maintain a suit against a *yajmán* who has employed another priest to perform ceremonies, and recover the amount of the fee which would properly be payable to him if he had been employed to perform such ceremonies. As a rule, the fee paid to the priest actually employed would afford a fair indication of the amount recoverable by the plaintiff under such circumstances. *Semble.* A *yajmán* ought to pay to the village or city priest, if not employed, a fee similar in amount to that which he (the yajmán) pays to the priest actually employed, if the latter were not unreasonably large. I. L. R. 3 Bom. 9.

5. Plaintiff sued to recover certain fees from defendant, alleging that he had a right to officiate at marriages among the defendant's caste-people, and that, according to this right, he (plaintiff) had officiated at the marriage of the defendant's son at his request. The Lower Court raised the issue, whether the plaintiff was entitled to the right alleged by him, and the issue was accepted by the parties without any objection. That Court held that, albeit plaintiff was head or senior of the caste, he could not have any right in that character to any fees at weddings, and accordingly dismissed the suit. In appeal the District Judge found that, if any such right had ever existed in the plaintiff, it had been taken away by Act XIX of 1844; he was also of opinion that plaintiff had not been invited to assist and did not assist at the marriage ceremony in question, and he affirmed the decree of the Court below: *Held* by the High Court, in reversal of the decrees of the Lower Courts, that Act XIX of 1844 did not apply to the case; and that the District Judge was bound to decide the question really involved in the issue, *viz.*, whether, invited or uninvited, plaintiff was entitled by custom to the fees claimed by him. I. L. R. 3 Bom. 210.

See Declaratory Decree 11.
Endowment 27.
Hereditary Office 4, 5, 6, 7.
Limitation (Act IX of 1871) 66, 80.
Raj 5.
Will 17, 51.

Hindoo Widow.

1. According to the Mitacshara a — may dispose of moveable property inherited from her husband, a power she does not possess under the law of Bengal; but by both laws she is restricted from alienating any immoveable property, whether ancestral or acquired, so inherited. On her death the immoveable, and the undisposed of moveable, property pass to the next heirs of her husband. (P. C.) 2 P. C. R. 49 (10 W. R. P. C. 3; 11 Moo. 139). *See also* 3 P. C. R. 572 (L. R. 6 I. A. 15; I. L. R. 4 Cal. 744).

2. In a suit brought by a third person to recover or to charge an estate of which a — is the proprietress, she will, as defendant, represent and protect the estate as well in respect of her own as of the reversionary interest. (P. C.) 2 P. C. R. 77 (8 W. R. P. C. 17; 11 Moo. 241). *See* 23 W. R. 174, (P. C.) 3 P. C. R. 207 (24 W. R. 306; L. R. 2 I. A. 275; I. L. R. 1 Cal. 133); I. L. R. 4 Cal. 239.

3. Where a party entitled to impeach an alienation by a — of her husband's estate sues to set aside such an alienation, and defendant establishes not only that he had a charge on the estate in virtue of a mortgage deed executed by the —, but that the debt to him was on account of advances for necessary purposes, if plaintiff alleges that the mortgage deed was not *boná fide*, the *onus* lies on him to prove his allegation. (P. C.) 2 P. C. R. 103 (10 W. R. P. C. 47; 11 Moo. 619).

4. The estate of two widows is one of coparceners; their acquiescence in a partition only binds each other not to disturb the other's possession, but does not affect the right of survivorship. (P. C.) 2 P. C. R. 124 (9 W. R. P. C. 23, 11 Moo. 487). *See also* 17 *post* and 3 P. C. R. 572 (L. R. 6 I. A. 15; I. L. R. 4 Cal. 744).

5. Alienation of her husband's property by a —. The *onus probandi* is on the party seeking to uphold such a sale. (P. C.) 2 P. C. R. 275 (12 W. R. P. C. 47; 13 Moo. 209; 3 B. L. R. 57).

6. A transaction of this sort may become valid by the consent of all the husband's kindred who are likely to be interested in disputing it, or by such a concurrence of the members of the family as suffices to raise a presumption that the transaction was a fair one and justified by Hindoo law. (P. C.) *Ib.*

7. A —, by putting in petitions in the course of legal proceedings disclaiming her right to property which had descended to her son and in which she then had no interest

HINDOO WIDOW (*continued*).

at all, cannot be prevented from setting up her real right as heir of her son when that right actually accrued, *i.e.*, upon the death of her son. (P. C.) 2 P. C. R. 388 (15 W. R. P. C. 16; 13 Moo. 585; 6 B. L. R. 283).

8. The assumption of an absolute power of disposition by a — over her husband's estate, and the exercise of the limited power of charging the estate for certain defined purposes, are essentially different causes of action. (P. C.) 2 P. C. R. 474 (14 Moo. 192; 10 B. L. R. 1).

9. The *onus* is on those who rely upon a mortgage from a person having only a limited power to grant it (as in this case a —), to show that the money was raised for a legitimate purpose. (P. C.) *Ib.*

10. The wife of a Hindoo who predeceased his father without male issue, is entitled as his — to succeed to his separate estate. Even if the son survived his father, but died subsequently, and before a partition, his share, according to the Mithila law, would pass to his brothers to the exclusion of his —, who would be entitled only to maintenance. (P. C.) 2 P. C. R. 591 (18 W. R. 69; 14 Moo. 412).

11. A — does not lose her right to maintenance by reason of her leaving her husband's house, provided she does not leave for the purposes of unchastity, or for any other improper purpose. (P. C.) 2 P. C. R. 846 (20 W. R. 21; 12 B. L. R. 238; L. R. I. A. Sup. 203). *See also* 31 *post.*

12. A — is entitled to alienate ancestral property for the purpose of paying off her husband's debts. (P. C.) 2 P. C. R. 869 (20 W. R. 95).

13. The doctrine of the right of a — to accumulations does not apply where the — intended to make her purchases as accretions to her deceased husband's property. (P. C.) 2 P. C. R. 975 (14 B. L. R. 159).

14. Where a — conveyed to a *bonâ fide* purchaser for value an ancestral estate beyond her own life, and the purchaser paid off a mortgage upon the property existing at the time of the conveyance, it was held, on a suit by a reversioner, that as there was no proof of necessity justifying an absolute sale of the estate by the —, the plaintiff was entitled to recover the property after her death on payment of the full purchase-money as well as of the mortgage paid by the purchaser. (P. C.) 3 P. C. R. 43 (22 W. R. 409; 14 B. L. R. 226; L. R. 2 I. A. 7).

15. Where a family settlement by her husband gave to a — an estate for life with power to appropriate the profits, and to his adopted son a vested remainder on her death: *Held*, that she could make whatever use she chose of the proceeds of her estate, and that the settlement could not be construed so as to change the nature of her estate to that of a —, and consequently change the nature of the reversioner's interest from a vested remainder to a contingent one. (P. C.) 3 P. C. R. 186 (24 W. R. 168; L. R. 2 I. A. 256; 7 B. L. R. 93). *See* I. L. R. 5 Cal. 512.

16. In a suit by the mother of a deceased Hindoo against his — for arrears of maintenance, it was held that the liability of the — was personal, and that the auction-purchaser could obtain merely the widow's interest which only was liable to be sold in execution. (P. C.) 3 P. C. R. 207 (24 W. R. 306; L. R. 2 I. A. 275; I. L. R. 1 Cal. 133).

17. According to the Hindoo law in Madras, two or more lawful widows take a joint estate for life in their husband's property, with rights of survivorship and equal beneficial enjoyment; and though they have no right to enforce an absolute partition of the joint estate between them, they may agree to an arrangement for separate possession and enjoyment of their respective shares, leaving the title to each share unaffected. (P. C.) 3 P. C. R. 447 (L. R. 4 I. A. 212; I. L. R. 1 Mad. 290). *See also* 4 *ante.*

18. The Privy Council expressed its extreme reluctance to interfere with the decision of the Court below upon a question of maintenance to which a — is entitled, in deciding which regard should always be had to the value of the estate, as well as to the position and status of the deceased husband and of the —. In this case, however, their Lordships raised the maintenance, because there was a departure by the Lower Court from the strict principles which ought alone to have guided it, inasmuch as it allowed as low a maintenance as possible by way of punishment to the — for having groundlessly resisted the claim of her late husband's adopted son. (P. C.) 3 P. C. R. 505 (L. R. 5 I. A. 55).

19. Where legal necessity can be proved for raising a portion of the money which formed the consideration for a deed of sale by a —, but not the whole of it, the deed would not be wholly void as regards a reversionary heir, but would be valid as against him to charge the estate for the amount necessary to be raised. (P. C.) 3 P. C. R. 540 (L. R. 5 I. A. 149; I. L. R. 4 Cal. 190).

20. Where the evidence was not sufficient to show what portion of the advances made to the — was made for necessary purposes, and it did not appear advisable to remand the case for a further enquiry which, after causing great expense and delay, would not be binding upon the whole family, the Privy Council declined to make a declaratory decree with respect to the deed. (P. C.) *Ib. See* I. L. R. 5 Cal. 512.

21. Where a will makes no condition that, to entitle a — to maintenance, she should reside under the same roof and in joint family with the son, she is left in this respect in the ordinary position of a —, according to which separation from the ancestral home would not generally disentitle her to maintenance suitable to her rank and condition. (P. C.) 3 P. C. R. 617 (L. R. 6 I. A. 114; I. L. R. 3 Bom. 415).

22. Under the Hindoo law, as administered in the Bengal School, a — who has once inherited the estate of her husband is not liable to forfeit that estate by reason of unchastity. (P. C.) 3 P. C. R. 765 (L. R. 7 I. A. 115; I. L. R. 5 Cal. 776). *Affirming* F. B. ruling in 19 W. R. 367 (13 B. L. R. 1).

So held under the Mitacshara law. (F. B.) I. L. R. 2 All. 150.

23. *Quære:* As to the effect of Act XXI of 1850, if the — had been degraded or deprived of her caste in consequence of her unchastity. (P. C.) *Ib.*

24. *Held*, after an exhaustive review of the authorities and precedents bearing on the question, that, by the Hindoo law of inheritance prevailing in Western India, the — of a pre-deceased collateral relative (a paternal first cousin in this case) is entitled to succeed in preference to a more remote collateral male relative of the propositus. (P. C.) 3 P. C. R. 795 (L. R. 7 I. A. 212). *Affirming* F. B. ruling in I. L. R. 2 Bom. 388.

In Bombay the wife is a *sapinda* as well as a *gotraja* of her husband, and if he die without leaving a son or grandson, she, on the subsequent death of his separated *sapinda*, and in the absence of any specially designated heir entitled to preference, ranks in the same place in the order of succession to the property of such separated *sapinda* as her husband would have occupied if he were living. In other words, a wife becomes by her marriage a *sagotra-sapinda* of her husband and his *gotraja-sapindas*, and in that capacity succeeds as a — to the property which he would have taken as a *sapinda* before the male representative of a remoter branch. (F. B.) I. L. R. 2 Bom. 388.

25. The lien of a — for maintenance out of the estate of her deceased husband is not a charge on that estate in the hands of a *bonâ fide* purchaser irrespective of notice of such lien. I. L. R. 1 Cal. 365. *See also* I. L. R. 2 Bom. 494.

26. A —, before she can enforce her charge for maintenance against property of her deceased husband in the hands of a purchaser from his heir, must show that there is no property of the deceased in the hands of the heir. *Ib.*

27. Debts contracted by a Hindoo take precedence of his widow's claim for maintenance, and *semble* that if a portion of his property is sold after his death to pay such debts, the — cannot enforce her charge for maintenance against such property in the hands of the purchaser. *Ib. See also* I. L. R. 2 Bom. 494.

28. *Quære* whether a —, by obtaining against her husband's heir a personal decree for maintenance unaccompanied by any declaration of a charge on the estate, does not lose her charge upon the estate. *Ib.*

29. The question whether a — is entitled to partition is one for the discretion of the Court in each particular case. In this case, where the plaintiff had daughters and grandsons, and the share she was entitled to through her husband was considerable, she was held entitled to a decree for partition. (O. J.) I. L. R. 2 Cal. 262. *See also* I. L. R. 2 Bom. 494.

30. A —, who has obtained letters of administration from the High Court of the estate of her husband who has left a minor son, is not entitled in such character to maintain a suit with respect to immoveable property left by him. The Court refused to allow such a suit to proceed by adding the

HINDOO WIDOW (*continued*).

son as a party, or to treat the plaintiff as manager of the infant son, but dismissed the suit with costs. (O. J.) I. L. R. 2 Cal. 431.

31. A — entitled to a bare or starving maintenance, under a decree made in a suit brought by her for maintenance against the representatives of her deceased husband, is not to be deprived of the benefit of that decree by the fact that she has since its date been leading an incontinent life. I. L. R. 1 Bom. 559. *See also* 11 *ante*.

32. Where a sum of money was given to a —, without restriction in lieu of maintenance, by her deceased husband's family: *Held* that it became absolutely hers, and that she could dispose by will of landed property acquired by means of it. I. L. R. 1 Mad. 166.

33. *Held* by the Full Bench that a — is not entitled, under the Mitacshara law, to be maintained by her husband's relatives merely because of the relationship between them and her husband. Her right depends upon the existence in their hands of ancestral property. (F. B.) I. L. R. 1 All. 170. *See also* I. L. R. 2 Bom. 494, 573.

34. *Held*, on the case being returned to the Division Bench, that the fact that the defendant in this case was in possession of ancestral immoveable property at the death of his son and had subsequently sold such property to pay his own debts, did not give the son's widow any claim to be maintained by him. *Ib.*

35. A —, who resides with her husband and the members of his family in the family dwelling-house while he is alive is entitled to reside therein after his death, and cannot be ousted by the auction-purchaser of the rights and interests in the house of her husband's nephew. I. L. R. 1 All. 262. *See also* I. L. R. 2 Bom. 494.

36. A — does not forfeit her interest in her husband's separate estate merely by divesting herself of such interest. Such an act does not entitle the person claiming to be the next reversioner to sue for possession of the estate, or for a declaration of his right as such reversioner to succeed to the estate after the widow's death. I. L. R. 1 All. 503.

37. The nature of the estate of a — in immoveable property considered. I. L. R. 2 Bom. 67.

38. In a suit for maintenance by a — against her husband's brother who was the sole surviving member of the husband's family, and against *bonâ fide* purchasers for value from him (the defendant) of certain immoveable ancestral property of the family: *Held* that the mere circumstance that such purchasers had notice of her claim is not conclusive of the widow's rights against the property in their hands. If the property were sold in order to pay debts (not incurred for immoral purposes) of her husband or his father or grandfather, or for the benefit of the joint undivided family, or to satisfy a former decree obtained by the plaintiff herself against the same defendant for maintenance, such sale would be valid against her, whether or not the purchasers had notice of her claim. I. L. R. 2 Bom. 494.

39. According to the Mitacshara, sons must, from the moment of their father's death, be regarded as sole owners of the estate, yet with a liability to provide for the maintenance of their father's widow, and with a competence on the widow's part to have the estate made answerable. *Ib.*

40. Authorities on the subject of the maintenance of a — reviewed. *Ib.*

41. In Bombay a —, voluntarily living apart from her husband's relatives, is not entitled to a money allowance as maintenance from them if they were separated in estate from him at the time of his death; nor is she entitled to such maintenance from them whether they were separated or unseparated from him at the time of his death, if they have not any ancestral estate or estate belonging to him in their hands. (O. J. F. B.) I. L. R. 2 Bom. 573.

42. *Semble*. A —, who has received a full share as and for her maintenance, cannot, when she has exhausted it, enforce from the relatives of her husband, or from the family estate, a further allotment, or a money allowance for maintenance. (O. J. F. B.) *Ib.* *See also post* 44.

43. S, a —, voluntarily living apart from her husband's family, sued his paternal uncle, the nearest surviving male relative of her husband, for a money allowance as maintenance: *Held* that such suit was unsustainable because (1) the defendant was separated in estate from the plaintiff's husband at the time of his death; and because (2) at the institution of the suit the defendant had not in his hands any ancestral estate, or any estate which had belonged to the plaintiff's husband. (O. J. F. B.) *Ib.* *See also* I. L. R. 2 Bom. 632.

44. A — is not entitled to a larger portion of the annual produce of the family property as maintenance than the annual proceeds of the share to which her husband would have been entitled on partition if he were living. I. L. R. 2 Bom. 639. *See also* 42 *ante*.

45. Suit between a — claiming administration to the estate and effects of her deceased husband as his only legal personal representative, and a caveator claiming the whole property as an undivided second cousin of the deceased and sole surviving member of the family. The widow asserted a division, and that the whole property of the deceased had been self-acquired by his father. The Court of first instance found against division and against self-acquisition, laying the burthen of proof of each question entirely on the party asserting the facts. On appeal it was contended for the appellant (plaintiff) that the *onus* on plaintiff was sufficiently discharged when it was shown that the two branches of the family were trading separately, and that certain items of property were acquired in the names of members of the branch of the family to which plaintiff's husband belonged; that then it rested with the other side to show that there were joint funds from which the purchases could have been made: *Held* that such a contention could not be maintained. (O. J. Ap.) I. L. R. 2 Mad. 19.

46. The widow of a coparcener in a Hindoo family is not entitled to separate maintenance in the absence of special circumstances necessitating her withdrawal from the family and separate residence. Authorities on the subject reviewed. I. L. R. 3 Bom. 44. *See post* 52, 53, 58, 59.

47. The widow of a coparcener is not, in Bombay, entitled, as in Bengal, to her husband's share to use at her discretion for life. All she can strictly demand is a suitable maintenance when necessary, and whatever is required to make such a demand effectual. *Ib.*

48. It is sufficient for the protection of the right of a — to her husband's estate from forfeiture by reason of unchastity that such right has vested in her before her misconduct. It is not necessary for such protection that she should have acquired possession of the estate before her misconduct. I. L. R. 2 All. 171.

49. A — has a legal right, irrespective of demand and refusal, to maintenance, and may recover arrears for any period not excluded by the law of limitation applicable to her suit. I. L. R. 3 Bom. 207.

50. A — who, in default of issue to her husband, was in possession of his *deshgati enam*, borrowed money from plaintiff on an ordinary bond for the purpose of paying the Government assessment thereon. He subsequently adopted a son (the defendant) and died. Plaintiff sued the son to recover the money from him personally, and also sought to make the *deshgati enam* liable: *Held* that plaintiff could not recover his debt either from the defendant personally or from the *deshgati enam* in his possession. His only remedy was against the property (if any) of the — in the hands of the defendant. I. L. R. 3 Bom. 237.

51. A wife is, under the Hindoo law, in a subordinate sense, a co-owner with her husband; he cannot alienate his property, or dispose of it by will, in such a wholesale manner as to deprive her of maintenance. Where, therefore, a husband made a gift of his entire estate, leaving his widow without maintenance: *Held* that the donee took and held such estate subject to her maintenance. I. L. R. 2 All. 315.

52. A — does not forfeit her right to maintenance out of family property chargeable therewith by reason of non-residence with the family of her husband, except such non-residence be for unchaste or immoral purposes. I. L. R. 3 Bom. 372. *See* 46 *ante* and 53, 58, 59 *post*.

53. Where there is family property available for maintenance, it lies upon the parties resisting the claim to separate maintenance to show that the circumstances are such as to disentitle the widow thereto: *e. g.* that she resides separately from her husband's family for immoral purposes, or that the family property is so small as not reasonably to admit of an allotment to her of a separate maintenance. *Ib.* *See* 46 *ante* and 53, 58, 59 *post*.

54. A grant by a —, with the sanction and concurrence

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of the next reversioner, is valid, and creates a title which cannot be impeached on the death of the widow by the person who, but for such grant, would be entitled as heir of her husband. I. L. R. 5 Cal. 44.

55. Held, in a suit by a — for maintenance, that the circumstance that she was not a childless widow, but had had a son who had died a minor subsequently to his father, was not a ground for reducing the allowance she would have been reasonably entitled to had she been a childless widow. I. L. R. 2 All. 407.

56. By Hindoo law the widow of a collateral does not take an absolute estate in the property of her husband's *gotraja sapinda*, which she can dispose of by will after her death. I. L. R. 4 Bom. 181.

57. *Quære* whether a — has power to alienate, beyond her own life-interest, property which she has purchased from accumulations of income derived from her late husband's estate, made after his death, and while she was entitled to the interest of a — in such estate. I. L. R. 5 Cal. 512.

58. A — is not bound to reside with the family of her husband, and, if he were in union with them at the time of his death, she is entitled to a separate maintenance where the family property is sufficiently large to admit of an allotment of separate maintenance to her. I. L. R. 4 Bom. 261. *See* 46, 52, 53 *ante*, and *post* 59.

59. Where, however, the plaintiff, a —, was satisfied for several years with the maintenance, viz., Rs. 16 per annum, fixed in an agreement executed by her and the defendant, and where the family of the husband was large and the family property small, the defendant being willing to maintain her in his house like the other members, the High Court declined to increase the amount, but gave the widow the right to elect between taking that sum and living separately, or accepting the defendant's offer to receive and maintain her in his own house in the same manner as the other members of his family. *Ib.* *See* 46, 52, 53, 58 *ante*.

60. The surrender of her estate by a —, or mother, to persons who at that time are unquestionably the heirs by Hindoo law of the person from whom she has inherited it, vests in those persons the inheritance which they would take if she at that time were to die. I. L. R. 5 Cal. 732.

61. A purchaser of immoveable property from a —, in order to show that the property is absolutely conveyed to him, ought to aver and prove that she sold it under such special circumstances as justify a — in alienating the immoveable property of her husband without the consent of his heirs. Even if her husband were separate in estate from his father and brothers at the time of his death, and died without male issue, his widow would have no power to make an absolute alienation of his estate in the absence of such special circumstances. She can only dispose of her widow's estate in his immoveable property, which estate determines either upon her death or re-marriage, and the purchaser is not entitled to retain the property after the occurrence of either of these events. I. L. R. 4 Bom. 462.

62. The plaintiff sued to recover possession of certain immoveable property sold to him by the first defendant, a —. The second defendant answered that his father and the first defendant's husband were undivided brothers, and that, as a childless widow, she had no right to sell the property. Both the Lower Courts upheld the sale as absolute, on the ground that she was competent to make it as widow of a separate Hindoo. The District Judge heard the appeal *ex-parte* under Act X of 1877 s. 551: *Held* that the decrees of the Lower Courts were unsustainable, as they did not contain the limitation pointed out above, and remanded the case for the trial of the issue, whether there were any such special circumstances as would justify the absolute sale by the first defendant to the plaintiff; and that the District Judge ought not to have disposed of the appeal *ex-parte* under Act X of 1877 s. 551. *Ib.*

63. In a case where a — is entitled to maintenance, it is better to award a fixed annual sum, and not a share of the income of the estate. I. L. R. 2 All. 777.

64. A — borrowed a sum of money for the purpose of defraying the marriage expenses of a granddaughter, the child of a son who had pre-deceased his father: *Held* that such sum, although it could not properly be considered a charge on the grandfather's estate, yet was one which was legally recoverable from the heirs, who, on the death of the widow, succeeded to the possession of such estate. I. L. R. 6 Cal. 36.

65. *Held* that there being a total failure of proof as to the proper explanation of a deed of mortgage to a — at the time of her execution thereof, and therefore as to her intention to transfer her husband's estate, the deed was inoperative in that respect. Otherwise, in order to bind the husband's estate, the mortgagor is bound at least to show the nature of the transaction, and that, in advancing his money, he gave credit on reasonable grounds to an assertion that the money was wanted for one of the necessities recognised by Hindoo law as justifying such transaction. (P. C.) L. R. 8 I. A. 8.

See Benamee 13.
Brother's Widow.
Contract 6.
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Death 1.
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Endowment 15, 28, 38.
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,, (Coparcenary) 7.
,, (Inheritance and Succession) 18, 21, 24, 25, 27, 29, 32, 35, 36, 41, 42, 48.
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Paternal Uncle's Widow.
Presumption 5.
Relief 2, 4.
Relinquishment 5.
Res Judicata 4, 7, 8, 13.
Reversioner 1, 2, 3, 4.
Sale (in Execution of Decree) 30.
Streedhun 1, 2, 3, 5, 6, 7.
Will 1, 17, 27, 28, 31, 59, 61, 62, 63.

Hoondee.

1. An accommodation-acceptor of certain *hoondees* was held to be not released from liability by the drawer's payment of interest in advance with his (the accommodation-acceptor's) knowledge and consent. (P. C.) 3 P. C. R. 760 (I. L. R. 6 Cal. 241). *Affirming* I. L. R. 4 Cal. 132.

2. The plaintiff, as agent and banker of an Ajmere constituent, received a — for collection, and on its acceptance by the drawer, credited the Ajmere constituent with the amount as of the date when the — would become payable: *Held* that, as between the plaintiff and the Ajmere constituent, the plaintiff, upon such credit in account being given, became a holder for value, and that, on the — being dishonored at due date by the drawee, the plaintiff was justified, by the usage of *shroffs*, in treating the Ajmere constituent as still entitled to credit for the amount, and himself as a holder for value. *Held* also that, as between the Ajmere constituent and the first indorser (the defendant and appellant), the giving by the Ajmere constituent to the defendant of another —, which was never presented in Bombay for acceptance or payment, was a consideration for the indorsement by the defendant to the Ajmere con-

HOONDEE (*continued*).

stituent of the — sent by the latter to the plaintiff and sued on by him. (O. J. Ap.) I. L. R. 1 Bom. 23.

3. On 2nd August 1872, A K filed a plaint against M H and M R, in which he alleged that on 1st April 1870 M R had given a — for Rs. 500 for value received to A K; that on 27th March 1871, M H purchased this — from A K, promising to pay him Rs. 534 for it; that M H gave the — to his brother J H for the purpose of obtaining payment of the amount from M R; and that J H subsequently informed A K that the — had been lost. A K accordingly prayed that the defendants M H and M R might be decreed to pay to him Rs. 534 with profits and interest. M H denied that he had purchased the — from A K, who, he alleged, had given the — to J H for the purpose of getting it cashed. M R admitted that he had executed the — and had given it to A K for Rs. 500. He further alleged that it had been presented to him for payment by J H, to whom he had paid the amount with interest on 31st March 1871, and he purchased the — with a receipt purporting to be by J H indorsed on it. The trying Judge, after settlement of issues, on 25th June 1874, added J H as a party defendant. J H alleged that A K had given him the — for the purpose of getting it cashed, denied the payment by M R, alleged the indorsement on the — to be a forgery, and pleaded limitation: *Held* that the admission by M R of the drawing of the — for value received, laid on him the burden of proving payment, and that, though the possession by M R of the — was a circumstance in his favor, yet as it did not in itself amount to proof of payment, the *onus probandi* was not thereby shifted; also that, with reference to Act IX of 1871 s. 22, the law of limitation applicable to the suit, so far as J H was concerned, was sch. 2 art. 60 of that Act, and that, therefore, if the payment by M R to J H were not proved to have been made within three years before 25th June 1874, the day on which J H was added as a defendant, the suit as against him was barred. I. L. R 1 Bom. 295.

4. While certain *hoondees* were running, the acceptor gave the holder (the drawer having become bankrupt) a mortgage of certain immoveable property as security for the payment of the *hoondees* in the event of their dishonor when they became due: *Held*, in a suit on the mortgage deed, the *hoondees* having been dishonored, that there was no consideration, within the meaning of that term in Act IX of 1872, for the agreement to mortgage, and that the same was void under s. 25. I. L. R. 1 All. 309.

5. In a suit on a — payable at Calcutta, the acceptor there having become bankrupt before the — reached maturity, brought by the holder in the place where the — was drawn against two partners of the firm that drew the —, and also the acceptor who resided at the time of suit beyond the local jurisdiction of the Court passing the decree, the Lower Appellate Court having dismissed the suit on the ground that the Court of first instance could not, without the sanction provided by Act XXIII of 1861 s. 4, pass a decree against the defendant who resided beyond its jurisdiction: *Held*, following the English law, that it was not necessary to sue the bankrupt defendant, and that the holder of a — is not bound, in the event of its dishonor, to sue all the parties liable under it, but may select any one or more of them. I. L. R. 1 All. 392.

6. Previous formal written notice of dishonor of a — is not necessary before suit brought, unless it can be shown that the parties charged have been prejudiced by such omission. I. L. R. 3 Cal. 339.

7. An insufficiently stamped — cannot be received in evidence even on payment of penalty under Act XVIII of 1869 s. 20. (O. J.) I. L. R. 4 Cal. 259.

8. Plaintiff, as payee of an order drawn by defendant at Ahmedabad, where he (defendant) resided, on a firm at Bankok in Siam, and dishonored on presentation, sued defendant and an agent of the Bankok firm, who resided at Surat, in the Subordinate Judge's Court at Surat. Permission to proceed with the suit against the defendant (the drawer) having been refused by the High Court, plaintiff withdrew his plaint and filed his suit in the Court at Ahmedabad against the drawer alone. The Subordinate Judge rejected the claim as barred by limitation: *Held* by the High Court in appeal that, under Act IX of 1871 s. 15, a deduction might properly be made of the time during which the suit was pending in the Court at Surat, and that the deduction on this account was to run from the filing of the plaint to the final refusal of the High Court to allow the suit to proceed at Surat against the drawer (defendant); and that plaintiff ought not to have joined the drawer (defendant) and the Bankok firm as defendants in the same suit. I. L. R. 3 Bom. 182.

9. Immediately on failure of payment of a draft at sight, whatever may be the real state of the account between the drawer and the drawee, the former becomes liable to the payee for the amount which would place him at the stipulated time and place in the same position as if the money had been duly paid. Where there is no acceptance, no cause of action can arise to the payee against the drawee. Nor is the legal relation between the drawer and the payee altered by a partial acceptance, the contract being in its nature indivisible; much less can any mere promise to pay part at a future time in any way satisfy the payee's claim or postpone his right to reimbursement of his loss from the drawer. *Ib.*

10. If the drawee of a *jokhmi* — refuses to accept it, but nevertheless as consignee takes possession of the goods against which it is drawn, and which are referred to in it, the only remedy of the holder is against the drawer of the —, or the person from whom the holder bought it. (O. J.) I. L. R. 4 Bom. 333.

11. Plaintiffs at N purchased, on 22nd December 1878, from L for Rs. 4000 a *jokhmi* — drawn in favor of plaintiffs by L upon his firm in Bombay. The — purported to be "drawn against" 29 bales of wool shipped at Tuna, and was made payable eight days after the safe arrival of the ship at Bombay. At the same time plaintiff obtained from L a letter to his firm at Bombay, informing them of the drawing of the — as against 29 bags of wool shipped on the vessel specified, and requesting them on the arrival of the vessel to land and deliver the goods to J G, and as to the *jokhmi hoondees* drawn before, if any money were payable to J G, to pay the same. The above letter was duly presented by plaintiffs to L's Bombay firm on 27th December 1878. Evidence was given that, at the time plaintiffs obtained the — and the letter, the goods referred to had been already shipped. On 1st January 1879, L's firm was adjudicated insolvent. On 5th January 1879, the ship arrived at Bombay, and on 7th January the shipowners delivered the goods to the Official Assignee. Plaintiffs sued the Official Assignee (as assignee of the estate and effects of L) and the shipowners to recover possession of the wool, or the amount of the —: *Held* that plaintiffs, as holders of a *jokhmi* —, had no charge upon the wool in question, and could not, upon this ground, recover from defendants the possession of the wool or the amount due upon the —; but that the letter of 22nd December 1878, operated as an equitable assignment of the wool to the plaintiffs, on the safe arrival of the vessel, as a security for the payment of the —, and that the plaintiffs were therefore entitled to obtain possession of the wool. (O. J.) *Ib.*

See Bill of Exchange 1.
Jurisdiction 17.
Service 6.

Hossaipore.

See Hunsapore.

Hotchpot.

See Hindoo Law (Coparcenary) 20.
Partnership 6.

House.

1. Demolition of —. *See* Municipal 14; Right to Light and Air 3, 4, 5.
2. Gaming —. *See* Gambling 1.

See Attachment 10.
Court Fees 8, 13, 16, 19.
Hindoo Widow 46, 52, 53, 58, 59.
House-breaking by Night.
House Rent.

HOUSE (*continued*).

See Jurisdiction 12.
Landlord and Tenant 9.
Limitation (Act IX of 1871) 8.
,, (Act XV of 1877) 9, 21, 23, 27, 33.
Lurking House Trespass.
Mamlutdar 3, 4.
Manager 4.
Mortgage 89, 98, 128.
Negligence 1.
Oudh 5.
Pre-emption 11.
Registration 15.
Residence.
Sale (in Execution of Decree) 12, 40, 44, 46, 47, 48.
Special Appeal 7.
Vendor and Purchaser 5.
Will 61.

House-breaking by Night.

See Cumulative Sentences 1.
Criminal Trespass 3.

House Rent.

See Court Fees 8.
Landlord and Tenant 9.
Limitation (Act XV of 1877) 33.
Mortgage 108.
Sale (in Execution of Decree) 46, 47, 48.
Tender 2.

House Tax.

See Landlord and Tenant 9.

Howala.

See Enhancement 5.
Limitation 14.

Hulwaee Caste.

See Marriage 15.

Hunsapore.

Succession to the zemindaree of —. (P. C.) 2 P. C. R. 114 (9 W. R. P. C. 15; 12 Moo. 1).

See Raj 2.

Hurt.

1. Where a person — another who was suffering from spleen disease intentionally, but without the intention of causing death or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of such other person: *Held* that he was properly convicted, under s. 323 Penal Code, of voluntarily causing —. (Cr.) I. L. R. 2 All. 522.

See Causing Death by Negligence 1, 2.
Grievous Hurt.
Rioting 1.

Husband and Wife.

1. In a suit by a Mahomedan wife, who had left her husband's protection on account of ill-usage, for recovery, among other property, of certain Government securities belonging to her which had got into the husband's possession, and the detention of which he justified on the ground that he had purchased them from her, and on their endorsement and delivery to him had paid the full value for them, the correct principle as to the *onus* of proof is that, although the wife may have failed to establish affirmatively the precise case alleged by her, her husband, having admitted the receipt of the securities from her, was bound to show something more than mere endorsement and delivery; that the relation of the parties being what it was, it lay upon him to prove that the transactions which he set up were *bonâ fide* sales and purchases, and that he actually gave full value for what he received from her; and where it was proved that the wife had the securities while under her husband's protection, and some of them had passed from her to him, and others to his creditors, and that the wife left her husband's house in destitution, the proof adduced by the husband as to the sale for full consideration to him must be full and clear, and such as to satisfy a Court of justice that the transactions were conducted fairly and properly and with a due regard to the rights and interests of the wife. (P. C.) 2 P. C. R. 59 (8. W. R. P. C. 3; 11 Moo. 551).

2. Where the immoveable property of the wife is proved to have passed to a *bonâ fide* purchaser under conveyances executed by her to her husband or to such purchaser, the *onus probandi* is on her. *Ib.*

3. Restitution of conjugal rights. *See* Conjugal Rights.

4. Where a Hindoo wife is entitled to an absolute estate in certain property, her husband cannot cut down her interest to a life interest by any dowl which he may make. (P. C.) 3 P. C. R. 79 (23 W. R. 184).

5. A wife's separate property (consisting of certain articles of household furniture) was seized in execution of a decree against her husband, and remained in Court subject to the seizure. The wife then sued in her own name to recover the articles of furniture or their value from her husband, on the ground that they were her separate property, and preferred a claim in her own name to the property under Act IX of 1850 s. 88. The property was found to be the wife's, and the — were persons subject to the provisions of Act X of 1865 s. 4 and Act III of 1874: *Held* under s. 7 of the latter Act that the suit was maintainable against the husband. *Held* also that the judgment for the plaintiff in the suit, to recover the furniture or its value from the husband, could not, without satisfaction, have the effect of vesting the property in the husband from the time of the conversion, and therefore the claim under Act IX of 1850 was also maintainable. (O. J.) I. L. R. 1 Cal. 285.

6. Under the Hindoo law, a wife who has voluntarily separated from her husband, without any circumstances justifying her separation, is liable for debts contracted by her (even for necessaries), although without her husband's consent; but her liability is limited to the extent of any streedhun she may have. I. L. R. 1 Bom. 121.

7. Every person who receives a married woman into his house and suffers her to continue there after he has received notice from the husband not to harbour her, is liable to an action for damages or injunction, unless the husband has, by his cruelty or misconduct, forfeited his marital rights, or has turned his wife out of doors, or has by some insult or ill-treatment compelled her to leave him. I. L. R. 1 Bom. 164.

8. Where a Hindoo wife has a joint interest with her husband in landed properties, partly acquired by purchase, partly (as soudayakum) by gift from her father: *Held* that she was entitled on her husband's death to part with her interest in those properties. I. L. R. 1 Mad. 307.

9. Although by Hindoo law a husband is bound to maintain his wife, she is not entitled to a separate maintenance from him unless she proves that, by reason of his misconduct or by his refusal to maintain her in his own place of residence, or other justifying cause, she is compelled to live apart from him. I. L. R. 2 Bom. 634.

10. C, a married woman, was entitled, under her father's will, to certain money "absolutely for her sole use and

Husband and Wife (*continued*).

benefit, free from the control, debts, and liabilities of her husband" and under such will such money was payable to her "on her sole and personal receipt." While so entitled, C borrowed from her husband the purchase-money of certain real property, on the understanding that she would pay him back such money when she obtained her legacy. The conveyance of such property was made to C, but not to her separate use. C subsequently assigned her legacy by sale, and out of the money obtained by such assignment repaid her husband the purchase-money of the property purchased: *Held* that the conversion by C of her legacy did not alter its character and conditions, and that the property purchased was her own separate property and was not subject to the debts or liabilities of her husband. I. L. R. 1 All. 762.

11. *Held* also that, even if English law were applicable in the case, and any interest in the property purchased passed to C's husband, it passed, in view of the agreement between her and her husband, on an implied contract that he would hold the property in trust for her; and that where such property was purchased at a sale in execution of a decree against the husband as his property with notice that such property was claimed by C as her separate property, such purchase did not defeat the title of C. I. L. R. 1 All. 772.

12. Act III of 1874 applies to persons having an English domicile. Accordingly the separate property of a married woman (whose husband's domicile is English) is alone bound by all debts, obligations, and engagements incurred by her in the management of a business carried on by her alone, and execution of any decree obtained against her in respect of such business should be limited to her separate property. The principle that the wife is impliedly carrying on business as the agent of the husband is excluded by the provisions of the above Act. (O.J.) I. L. R. 4 Cal. 140.

13. In granting alimony to the wife, the Court should be very reluctant, even supposing it has the power, to tie up the property of the husband, and so convert alimony into an absolute interest in, and charge upon, his estate. I. L. R. 4 Cal. 260.

14. A wife, during the prolonged absence of her husband, who was erroneously supposed to be dead, acting in excess of the limited powers of a wife in possession of her absent husband's property, made a *mourosee* grant of a portion of her husband's estate. The grantee entered into and remained in possession for upwards of twelve years: *Held* that the position of the grantee was not that of a lessee, and that his possession (although in its inception an act of trespass against the husband) having continued for upwards of twelve years, had perfected his title to the lands. I. L. R. 4 Cal. 327.

15. Where the divorce of a Mahomedan wife has become absolute (the parties being Soonnees), the husband is not entitled to the custody of his infant daughter until she had attained the age of puberty. I. L. R. 2 All. 71.

16. S, by an instrument in writing duly registered, agreed, for valuable consideration, for himself, his heirs, and successors, to pay his wife A a certain sum monthly out of the income of certain land, and not to alienate such land without stipulating for the payment of such allowance out of its income. He subsequently gave L a usufructuary of the land subject to the payment of the allowance. L gave R a sub-mortgage of the land, agreeing orally with R to continue the payment of the allowance himself: *Held*, in a suit by A against L for arrears of the allowance, that A was not affected by any agreement between L and R as to the payment of the allowance, and R, being in possession of the land, was bound to pay the allowance. I. L. R. 2 All. 162.

17. Under a gift of moveable and immoveable property by a Hindoo to his wife, the wife takes only a life estate in the immoveable property, and has no power of alienation over it, while her dominion over the moveable property is absolute. I. L. R. 5 Cal. 684.

18. A Hindoo wife takes by the will of her husband no more absolute right over the property bequeathed than she would take over such property if conferred upon her by gift during the lifetime of her husband; and whether in respect of a gift or a will, it is necessary for the husband to give her in express terms a heritable right or power of alienation. *Ib.*

See Divorce.
Dower, 12, 13, 14, 17.
Execution of Decree 16.
Gift 10.
Hindoo Law (Adoption) 39.
„ Widow 24, 51.
Maintenance 10, 11.
Marriage.
Purdah Woman 10.
Streedhun 4, 8.
Succession 2.
Will 53.

Idiot.

See Registration 11.

Idol.

See Benamee 2.
Endowment 4, 8, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 33, 34, 40.
Hereditary Office 5.
Hindoo Law (Religious Ceremonies) 3.
Limitation (Act IX of 1871) 66, 80.
Privy Council 22.
Will 2.

Ignorance.

See Limitation (Act IX of 1871) 10.

Ijara.

See Enhancement 13.
Estoppel 13.
Julkur 8.
Lease 8.
Right of Occupancy 2.

Illegal Gratification.

1. The manager of a Court of Wards estate paid into a Bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. A *poddar* in the Bank demanded and took a reward for his trouble in receiving the money, and was prosecuted under s. 161 Penal Code: *Held* that, although the money might have been paid on behalf of Government, the money was received by the accused on behalf of the Bank and not on behalf of the Government, and that he was a servant of the Bank only, and not a public servant within the meaning of s. 21 cl. 9. (Cr.) I. L. R. 4 Cal. 376.

2. To ask for a bribe is an attempt to obtain one, and a bribe may be asked for as effectually in implicit as in explicit terms. (Cr.) I. L. R. 2 All. 253.

3. Where therefore B, who was employed as a clerk in the Pension Department, in an interview with A who was an applicant for a pension, after referring to his own influence in that department and instancing two cases in which by that influence increased pensions had been obtained, proceeded to intimate that anything might be effected by *kar-rawai*; and on the overture being rejected, concluded by declaring that A would rue and repent the rejection of it: *Held* that the offence of attempting to obtain a bribe was consummated. (Cr.) *Ib.*

Ikrarnamah.

See Contract 3.
Estoppel 3.

Illegitimate.

1. In the Soodra caste, — children may inherit and have a right to maintenance. (P. C.) 2 P. C. R. 267 (12 W. R. P. C. 41; 13 Moo. 141; 3 B. L. R. P. C. 1). *See also* 23 W. R. 334 (I. L. R. 1 Cal. 1), *and post* 4, 5.

2. In this case the word "children," as used in a will, was held to include — children. (P. C.) 2 P. C. R. 324 (13 W. R. P. C. 41; 5 B. L. R. 1; 13 Moo. 277).

3. The — son of a person belonging to one of the twice-born classes has a right to maintenance. So where a Rajah, having then no legitimate son, but having an — son, executed a sunnud in favor of the latter, who, in pursuance thereof, obtained delivery of possession of a certain village for his maintenance: *Held* that the Rajah was acting in the performance of a legal obligation, and that the grant made by the sunnud would not fall within the supposed prohibition that a father, having no legitimate son, is by the Mitacshara law incompetent to alienate ancestral estate to a stranger. (P. C.) 3 P. C. R. 436 (L. R. 4 I. A. 159; I. L. R. 3 Cal. 214).

4. The general result of the authorities both judicial and forensic is that, among the three regenerate classes of Hindoos (Brahmins, Kshatriyas, and Vaishyas), — children are entitled to maintenance, but cannot inherit, unless there be legal usage to the contrary; and that, among the Soodra class, — children, in certain cases at least, do inherit. The extent to which this right exists considered, and the texts of Hindoo law books bearing on the point referred to. I. L. R. 1 Bom. 97. *See also* (F. B.) I. L. R. 4 Bom. 37. *See* 1 *ante, and post* 5.

The above rule as to the three regenerate classes is applicable to Gosavis. I. L. R. 2 Bom. 140.

5. The — son of a Soodra, his mother having been a married woman at the time of forming an adulterous connection with his father, is entitled to maintenance out of his father's estate. I. L. R. 1 Mad. 306. *See* 1, 4 *ante*.

6. A custom recognising a right of heirship in an — son by an adulterous connection would be bad. I. L. R. 2 Bom. 140.

7. The right of an — son to maintenance out of his deceased father's property, cannot be decided in a suit which concerns a portion only of that property, and to which all persons in possession of the rest of the father's property are not parties. *Ib.*

8. An adult — son has not, according to the Dayabhaga, any right to maintenance. I. L. R. 4 Cal. 91.

9. There is nothing in Act X of 1872 which would warrant a Magistrate in ordering a mother to surrender her — child to its father, although such child be of the age of maturity. A refusal by the mother to make over the custody of the child in such a case would be no ground for stopping an allowance previously ordered. (Cr.) I. L. R. 4 Cal. 374.

10. The — offspring of a kept woman or continuous concubine amongst Soodras are on the same level as to inheritance as the issue of a female slave by a Soodra. Under the Mitacshara law the son of a female slave by a Soodra takes the whole of his father's estate, if there be no sons by a wedded wife, or daughters by such a wife, or sons of such daughters. If there be any such heirs, the sons of a female slave will participate to the extent of half a share only. *Held* accordingly that M, the — son of an *ahir* by a continuous concubine of the same caste, took his father's estate in preference to the daughter of a legitimate son of his father who died in the father's lifetime. I. L. R. 2 All. 134.

See Hindoo Law (Inheritance and Succession) 44.
Legitimacy.
Mahomedan Law 6.
Marriage 1.
Raj 5.
Son 1.

Immorality.

See Ancestral Property 1, 2, 13.
Contract 18.
See Endowment 39.
Gift 13.
Hindoo Widow 38, 52, 53.
Incest.
Naikins.
Prostitution.
Unchastity.

Immoveable Property.

See Ancestral Property 1, 3, 4, 6.
Auction-Purchaser (Execution-Sale) 2.
Benamee.
Conditional Sale 2.
Contract 18.
Court Fees 8.
Desai 2.
Estoppel 10.
Execution of Decree 7, 8, 15.
Gift 9, 11, 13.
Guardian and Minor 22.
High Court 22.
Hindoo Law (Inheritance and Succession) 23, 40, 48.
Hindoo Widow 1, 30, 32, 34, 36, 37.
Husband and Wife 2, 8, 17.
Joinder of Causes of Action 2.
Jurisdiction 11, 12, 37, 52, 54, 55, 57.
Limitation (Act XIV of 1859) 10, 11, 19, 26.
" (Act IX of 1871) 1, 22, 27, 31, 35, 40, 45, 46, 62, 79.
" (Act XV of 1877) 22, 30.
Mahomedan Law 8.
Majority 1.
Mortgage 67.
Partition 12, 13, 18.
Registration 21, 27, 30.
Sale (in Execution of Decree) 16, 21, 22.
Sheriff, 4, 5, 6.
Small Cause Court 8, 9, 10, 11.
Special Appeal 5.
Streedhun 2, 3, 5.
Under Tenure 3.
Vendor and Purchaser 6.
Will 11, 24, 34.

Impartibility.

See Desai 3, 4.
Hindoo Law (Coparcenary) 14.
" (Inheritance and Succession) 3, 7, 11, 21, 23, 25, 29.
Pachete 1.
Partition 2.
Pension 3.
Raj.
Zemindaree 1, 3, 5.

Imprisonment.

1. Abolition of — for debt. *See* Will 14; *post* 3.

2. Act X of 1872 s. 309 does not extend the period of — which may be awarded by a Magistrate under s. 65 Penal Code, but only regulates the proceedings of Magistrates whose powers are limited. (F. B.) I. L. R. 1 All. 461. *But see* I. L. R. 1 Mad. 277.

3. A judgment-debtor, imprisoned in satisfaction of the decree against him under Act VIII of 1859, is not entitled,

IMPRISONMENT (*continued*).

under Act X of 1877, to be released on the coming into operation of the latter Act, if he have then been imprisoned for more than six months but less than two years. (F. B.) I. L. R. 2 Bom. 148. *See* 1 *ante.*

4. The words "to — for a term exceeding 6 months or to fine exceeding 200 Rupees" in Act IV of 1877 s. 167 are confined in their meaning to substantive sentences, and cannot be extended to include an award of — in default of payment of fine, the operation of which is contingent only on the fine not being paid. (Cr.) I. L. R. 2 Mad. 30.

See Affray 1.
Arms 1.
Conjugal Rights 1.
Contempt of Court 6, 7.
Contract 4, 5.
Deccan of Agriculturists Relief 5.
High Court 6.
Insolvency 14.
Prisoner.
Punishment 2.
Small Cause Court 1.
Transportation 1.
Whipping 1.

Incapacity.

See Deaf and Dumb.
Disability.
Limitation (Act IX of 1871) 8.
Streedhun 6.

Incest.

See Hindoo Law (Adoption) 41.

Income Tax.

See Hindoo Law (Adoption) 25.
Road Cess 1.

Indemnity.

1. In the case of contracts of —, the liability of the party indemnified to a third person, is not only contemplated at the time of the —, but is the very moving cause of that contract; and in cases of such a nature, costs reasonably incurred in resisting, reducing, or ascertaining the claim may be recovered. (O. J.) I. L. R. 5 Cal. 811.

See Attorney and Client 11.
Indemnity Bond.
Insurance 2.

Indemnity Bond.

1. An — was given to five persons to secure the fidelity of a Naib. The Naib was afterwards employed by three only out of the five obligees in the bond: *Held* that on the Naib misconducting himself, the three obligees could not sue alone on the bond. *Semble*, neither in such case could the five obligees have sued, as the faithful service intended to be secured by the bond was service to five persons and not to three only. I. L. R. 5 Cal. 303.

See Stamp Duty 4.

Indigo.

1. A sold to B, the proprietor of an — concern of which C was a mortgagee, certain bags of — seed. The agreement of sale contained no promise pledging the crop of —, the product of the seed, as a security for its price. Subsequent to the sale and after the seed had been planted, C, under a decree on his mortgage, obtained possession of B's factory. In a suit by A against B and C for the price of the — seed: *Held* that, in the absence of any agreement by C to pay the debts of B, C could not be held liable. I. L. R. 3 Cal. 231.

2. A, the proprietor of an — concern, which comprised a putnee talook after mortgaging the entire concern to B, allowed the putnee talook to be sold for arrears of rent under Reg. VIII of 1819; C, the dur putneedar of the talook, whose rights were thus extinguished, then sued and obtained a decree for damages against A. After C had obtained this decree against A, A sold his equity of redemption in the entire mortgaged concern to B, and by this sale, all the *dena* and *powna*, or liabilities and outstandings of the concern, were transferred from A to B. C then, after notice to B, obtained an order, by which B was made the judgment-debtor in the place of A. B took no proceedings within one year to set aside this order; but after the lapse of three years, upon C attempting to execute his decree, instituted the present suit to set aside the order, and for an injunction to restrain B from executing the decree against him: *Held* (1) that the purchase by B of the *dena-powna* of the — concern of which A had been the proprietor, did not make B liable to pay the amount, for which C had obtained a decree against A, as damages for the extinguishment of his dur putnee right; (2) that the order substituting B for A in the suit for damages was illegal; (3) that although B was barred by limitation from suing to set aside that order, he was entitled to an injunction restraining C personally from executing the decree against him. (F. B.) I. L. R. 5 Cal. 86.

See Evidence 6.
Lien 1, 2, 3, 4.
Principal and Agent 3.
Will 24.

Information.

1. A khazanchee is not an "agent" within the meaning of Act X of 1872 s. 90. A dewan may be an "agent" if his master is absent; but s. 90 does not apply to a dewan who is acting only under the orders of his resident master. (Cr.) I. L. R. 4 Cal. 603.

2. *Quære* whether, according to s. 90, an agent is only responsible for giving — of the occurrence of any sudden or unnatural death. (Cr.) *Ib.*

3. The provisions of s. 90 should not be put in force against one who has omitted to give — to the Police of an offence having been committed in cases where the Police have actually obtained such information from other sources. (Cr.) I. L. R. 4 Cal. 623.

See False Information.

Inheritance.

1. Exclusion from —. *See* Hindoo Law (Inheritance and Succession) 26, 30, 31, 32, 46; Slave 1; Will 10*a*, 62, 64, 65.

See Declaratory Decree 18.
Hindoo Law (Inheritance and Succession).
Legitimacy 4.
Succession.

Injunction.

1. An — did not, under the law as it stood before Act I of 1877, lie against a decree-holder, by assignment or otherwise, to restrain him from executing a decree granted to him by a Court exercising co-ordinate jurisdiction with the Court in which the — was applied for, on the ground that the proceedings by which the decree was obtained against the person applying for the — were altogether illegal. I. L. R. 4 Cal. 380.

2. The cases in which — was granted by the Courts of Chancery in England against proceedings in other Courts, rested upon the assumption that the rights of the parties could not be enquired into except through the Courts of Chancery, and are therefore not applicable to India. *Ib.*

Illegitimate.

1. In the Soodra caste, — children may inherit and have a right to maintenance. (P. C.) 2 P. C. R. 267 (12 W. R. P. C. 41; 13 Moo. 141; 3 B. L. R. P. C. 1). *See also* 23 W. R. 334 (I. L. R. 1 Cal. 1), *and post* 4, 5.

2. In this case the word "children," as used in a will, was held to include — children. (P. C.) 2 P. C. R. 324 (13 W. R. P. C. 41; 5 B. L. R. 1; 13 Moo. 277).

3. The — son of a person belonging to one of the twice-born classes has a right to maintenance. So where a Rajah, having then no legitimate son, but having an — son, executed a sunnud in favor of the latter, who, in pursuance thereof, obtained delivery of possession of a certain village for his maintenance: *Held* that the Rajah was acting in the performance of a legal obligation, and that the grant made by the sunnud would not fall within the supposed prohibition that a father, having no legitimate son, is by the Mitacshara law incompetent to alienate ancestral estate to a stranger. (P. C.) 3 P. C. R. 436 (L. R. 4 I. A. 159; I. L. R. 3 Cal. 214).

4. The general result of the authorities both judicial and forensic is that, among the three regenerate classes of Hindoos (Brahmins, Kshatriyas, and Vaishyas), — children are entitled to maintenance, but cannot inherit, unless there be legal usage to the contrary; and that, among the Soodra class, — children, in certain cases at least, do inherit. The extent to which this right exists considered, and the texts of Hindoo law books bearing on the point referred to. I. L. R. 1 Bom. 97. *See also* (F. B.) I. L. R. 4 Bom. 37. *See* 1 *ante, and post* 5.

The above rule as to the three regenerate classes is applicable to Gosavis. I. L. R. 2 Bom. 140.

5. The — son of a Soodra, his mother having been a married woman at the time of forming an adulterous connection with his father, is entitled to maintenance out of his father's estate. I. L. R. 1 Mad. 306. *See* 1, 4 *ante*.

6. A custom recognising a right of heirship in an — son by an adulterous connection would be bad. I. L. R. 2 Bom. 140.

7. The right of an — son to maintenance out of his deceased father's property, cannot be decided in a suit which concerns a portion only of that property, and to which all persons in possession of the rest of the father's property are not parties. *Ib.*

8. An adult — son has not, according to the Dayabhaga, any right to maintenance. I. L. R. 4 Cal. 91.

9. There is nothing in Act X of 1872 which would warrant a Magistrate in ordering a mother to surrender her — child to its father, although such child be of the age of maturity. A refusal by the mother to make over the custody of the child in such a case would be no ground for stopping an allowance previously ordered. (Cr.) I. L. R. 4 Cal. 374.

10. The — offspring of a kept woman or continuous concubine amongst Soodras are on the same level as to inheritance as the issue of a female slave by a Soodra. Under the Mitacshara law the son of a female slave by a Soodra takes the whole of his father's estate, if there be no sons by a wedded wife, or daughters by such a wife, or sons of such daughters. If there be any such heirs, the sons of a female slave will participate to the extent of half a share only. *Held* accordingly that M, the — son of an *ahir* by a continuous concubine of the same caste, took his father's estate in preference to the daughter of a legitimate son of his father who died in the father's lifetime. I. L. R. 2 All. 184.

See Hindoo Law (Inheritance and Succession) 44.
Legitimacy.
Mahomedan Law 6.
Marriage 1.
Raj 5.
Son 1.

Immorality.

See Ancestral Property 1, 2, 13.
Contract 18.
Endowment 39.
Gift 13.
Hindoo Widow 38, 52, 53.
Incest.
Naikins.
Prostitution.
Unchastity.

Immoveable Property.

See Ancestral Property 1, 3, 4, 6.
Auction-Purchaser (Execution-Sale) 2.
Benamee.
Conditional Sale 2.
Contract 18.
Court Fees 8.
Desai 2.
Estoppel 10.
Execution of Decree 7, 8, 15.
Gift 9, 11, 13.
Guardian and Minor 22.
High Court 22.
Hindoo Law (Inheritance and Succession) 23, 40, 48.
Hindoo Widow 1, 30, 32, 34, 36, 37.
Husband and Wife 2, 8, 17.
Joinder of Causes of Action 2.
Jurisdiction 11, 12, 37, 52, 54, 55, 57.
Limitation (Act XIV of 1859) 10, 11, 19, 26.
,, (Act IX of 1871) 1, 22, 27, 31, 35, 40, 45, 46, 62, 79.
,, (Act XV of 1877) 22, 30.
Mahomedan Law 8.
Majority 1.
Mortgage 67.
Partition 12, 13, 18.
Registration 21, 27, 30.
Sale (in Execution of Decree) 16, 21, 22.
Sheriff, 4, 5, 6.
Small Cause Court 8, 9, 10, 11.
Special Appeal 5.
Streedhun 2, 3, 5.
Under Tenure 3.
Vendor and Purchaser 6.
Will 11, 24, 34.

Impartibility.

See Desai 3, 4.
Hindoo Law (Coparcenary) 14.
,, (Inheritance and Succession) 3, 7, 11, 21, 23, 25, 29.
Pachete 1.
Partition 2.
Pension 3.
Raj.
Zemindaree 1, 3, 5.

Imprisonment.

1. Abolition of — for debt. *See* Will 14; *post* 3.

2. Act X of 1872 s. 309 does not extend the period of — which may be awarded by a Magistrate under s. 65 Penal Code, but only regulates the proceedings of Magistrates whose powers are limited. (F. B.) I. L. R. 1 All. 461. *But see* I. L. R. 1 Mad. 277.

3. A judgment-debtor, imprisoned in satisfaction of the decree against him under Act VIII of 1859, is not entitled,

IMPRISONMENT (*continued*).

under Act X of 1877, to be released on the coming into operation of the latter Act, if he have then been imprisoned for more than six months but less than two years. (F. B.) I. L. R. 2 Bom. 148. *See* 1 *ante*.

4. The words "to — for a term exceeding 6 months or to fine exceeding 200 Rupees" in Act IV of 1877 s. 167 are confined in their meaning to substantive sentences, and cannot be extended to include an award of — in default of payment of fine, the operation of which is contingent only on the fine not being paid. (Cr.) I. L. R. 2 Mad. 30.

See Affray 1.
Arms 1.
Conjugal Rights 1.
Contempt of Court 6, 7.
Contract 4, 5.
Deccan of Agriculturists Relief 5.
High Court 6.
Insolvency 14.
Prisoner.
Punishment 2.
Small Cause Court 1.
Transportation 1.
Whipping 1.

Incapacity.

See Deaf and Dumb.
Disability.
Limitation (Act IX of 1871) 8.
Streedhun 6.

Incest.

See Hindoo Law (Adoption) 41.

Income Tax.

See Hindoo Law (Adoption) 25.
Road Cess 1.

Indemnity.

1. In the case of contracts of —, the liability of the party indemnified to a third person, is not only contemplated at the time of the —, but is the very moving cause of that contract; and in cases of such a nature, costs reasonably incurred in resisting, reducing, or ascertaining the claim may be recovered. (O. J.) I. L. R. 5 Cal. 811.

See Attorney and Client 11.
Indemnity Bond.
Insurance 2.

Indemnity Bond.

1. An — was given to five persons to secure the fidelity of a Naib. The Naib was afterwards employed by three only out of the five obligees in the bond: *Held* that on the Naib misconducting himself, the three obligees could not sue alone on the bond. *Semble*, neither in such case could the five obligees have sued, as the faithful service intended to be secured by the bond was service to five persons and not to three only. I. L. R. 5 Cal. 303.

See Stamp Duty 4.

Indigo.

1. A sold to B, the proprietor of an — concern of which C was a mortgagee, certain bags of — seed. The agreement of sale contained no promise pledging the crop of —, the produce of the seed, as a security for its price. Subsequent to the sale and after the seed had been planted, C, under a decree on his mortgage, obtained possession of B's factory. In a suit by A against B and C for the price of the — seed: *Held* that, in the absence of any agreement by C to pay the debts of B, C could not be held liable. I. L. R. 3 Cal. 231.

2. A, the proprietor of an — concern, which comprised a putnee talook after mortgaging the entire concern to B, allowed the putnee talook to be sold for arrears of rent under Reg. VIII of 1819; C, the dur putneedar of the talook, whose rights were thus extinguished, then sued and obtained a decree for damages against A. After C had obtained this decree against A, A sold his equity of redemption in the entire mortgaged concern to B, and by this sale, all the *dena* and *powna*, or liabilities and outstandings of the concern, were transferred from A to B. C then, after notice to B, obtained an order, by which B was made the judgment-debtor in the place of A. B took no proceedings within one year to set aside this order; but after the lapse of three years, upon C attempting to execute his decree, instituted the present suit to set aside the order, and for an injunction to restrain B from executing the decree against him: *Held* (1) that the purchase by B of the *dena-powna* of the — concern of which A had been the proprietor, did not make B liable to pay the amount, for which C had obtained a decree against A, as damages for the extinguishment of his dur putnee right; (2) that the order substituting B for A in the suit for damages was illegal; (3) that although B was barred by limitation from suing to set aside that order, he was entitled to an injunction restraining C personally from executing the decree against him. (F. B.) I. L. R. 5 Cal. 86.

See Evidence 6.
Lien 1, 2, 3, 4.
Principal and Agent 3.
Will 24.

Information.

1. A khazanchee is not an "agent" within the meaning of Act X of 1872 s. 90. A dewan may be an "agent" if his master is absent; but s. 90 does not apply to a dewan who is acting only under the orders of his resident master. (Cr.) I. L. R. 4 Cal. 603.

2. *Quære* whether, according to s. 90, an agent is only responsible for giving — of the occurrence of any sudden or unnatural death. (Cr.) *Ib.*

3. The provisions of s. 90 should not be put in force against one who has omitted to give — to the Police of an offence having been committed in cases where the Police have actually obtained such information from other sources. (Cr.) I. L. R. 4 Cal. 623.

See False Information.

Inheritance.

1. Exclusion from —. *See* Hindoo Law (Inheritance and Succession) 26, 30, 31, 32, 46; Slave 1; Will 10*a*, 62, 64, 65.

See Declaratory Decree 13.
Hindoo Law (Inheritance and Succession).
Legitimacy 4.
Succession.

Injunction.

1. An — did not, under the law as it stood before Act I of 1877, lie against a decree-holder, by assignment or otherwise, to restrain him from executing a decree granted to him by a Court exercising co-ordinate jurisdiction with the Court in which the — was applied for, on the ground that the proceedings by which the decree was obtained against the person applying for the — were altogether illegal. I. L. R. 4 Cal. 380.

2. The cases in which — was granted by the Courts of Chancery in England against proceedings in other Courts, rested upon the assumption that the rights of the parties could not be enquired into except through the Courts of Chancery, and are therefore not applicable to India. *Ib.*

INJUNCTION (*continued*).

3. An — to stay proceedings under Act I of 1877 can only be granted in cases where the Court in which the proceedings are to be stayed is subordinate to that in which the — is sought. *Ib.*

See Attachment 21.
Attorney and Client 10.
Court Fees 4.
Declaratory Decree 9, 11.
Hereditary Office 7.
Husband and Wife 7.
Indigo 2.
Jurisdiction 35.
Lakheraj 1.
Libel 1, 4.
Limitation (Act XV of 1877) 52, 53, 54, 55.
Market 1.
Marriage 6.
Partnership 11.
Restraint of Trade 1.
Right to Light and Air 1, 3, 4.
Trade Mark 1.

Insanity.

See Guardian and Minor 10.
Lunatic.

Insolvency.

1. Where a father, being insolvent when he purchased a property, mortgaged it, and the mortgagee, who had foreclosed and become absolute owner of the property, out of consideration for the father and the family, made a conveyance of his interest under the foreclosure to the son in consideration of money raised by the son to satisfy the real amount of his debt: *Held* that the arrangement was made for the benefit of the family, and that the father's creditors had no equitable or moral right to the property. (P.C.) 2 P. C. R. 490 (9 B. L. R. 456; 14 Moo. 234).

2. On the night previous to B's being adjudicated insolvent, about 10 p.m., the firm of R B D, at their place of business, promised to give B a loan of Rs. 5000 if he would the next morning deliver to them goods to that amount, and would in the meantime satisfy them that he had sufficient goods in his godown, and allow the firm of R B D to put their lock on the door of the godown to secure the goods until they had received the value of the loan. Thereupon B took the gomashta of the firm of R B D to his godown, let him see that it contained goods worth more than Rs. 5000, and allowed him to put a lock on the door, B at the same time replacing his own locks. The gomashta and B then returned to the office of R B D where Rs. 5000 were paid to B, who promised to deliver the next morning Rs. 5000 worth of goods out of the godown which had been locked up. Having received the money, B absconded from Calcutta that same night and never returned to his place of business. The next day he was adjudicated an insolvent: *Held* that the goods in the godown were not in the order and disposition of B within the meaning of 11 and 12 Vic. c. 21 s. 24. (O. J.) I. L. R. 2 Cal. 359.

3. Where a tenant of land, owing arrears of "tervai" (rent), takes the benefit of the Insolvent Debtor's Act (11 and 12 Vic. c. 21), the Official Assignee must elect, and express his election, to take the land *cum onere*; otherwise he acquires no interest in it. Where such an election has not been made, and a suit for possession is brought by a purchaser at an auction-sale held by the Revenue authorities for the arrears, the insolvent cannot plead a *jus tertii* in the Assignee. I. L. R. 1 Mad. 59.

4. M, who carried on the business of a watch and clock maker in Calcutta, borrowed from D M Rs. 6000 for which he gave a promissory note, and, as collateral security for the payment of this sum, he pledged certain articles consisting of watches, clocks, etc., with D M. The articles remained for some months in the custody of D M, who then re-delivered them to M for sale on commission, the proceeds to be applied in liquidation of the debt. M gave a receipt for the articles, and some of them were sold by M on those terms. On 2nd May 1877, M filed his petition in the Insolvent Court, and such of the articles as remained unsold came into the possession of the Official Assignee. On an application by D M claiming the articles and praying for an order directing the Official Assignee to return them, it was alleged that it was customary for European jewellers in Calcutta to receive articles on commission sale, and it was contended that such receipt did not divest the true owners of possession: *Held* that the articles were rightly vested in the Official Assignee. On the facts, the insolvent was the true owner of the goods. D M's interest ceased when he ceased to have possession of the goods; the receipt in this view only amounted to an agreement to sell and apply the proceeds in liquidation of the debt, and it could have been proved and a dividend recovered on it under the —. Even if the interest of D M did not cease, the goods were in the order and disposition of the insolvent, there being nothing to show any publicity or notoriety in the change of possession of the goods. No amount of evidence would convince the Court that there was a custom of purchasing goods from a retail dealer and leaving them with him for commission sale. *Semble.* No such arrangement would be upheld as against the Official Assignee. (O. J.) I. L. R. 3 Cal. 58.

5. Where an order had been made under 11 and 12 Vic. c. 21 s. 26 calling on a certain person to show cause why she should not hand over to the Official Assignee money which it was alleged the insolvent had paid to her shortly before his — under circumstances which might make the transaction void against the creditors: *Held* in the Court below that the transaction was a gift, and, under the circumstances, void as against the creditors within the 13 Eliz. c. 5; also that the word "property" in s. 26 of the former statute includes money. *Held* on appeal that the matter was not one which could properly be dealt with under s. 26, as it involved difficult questions of title. (O. J. Ap.) I. L. R. 3 Cal. 434.

6. N, an original allottee of five shares in the A company, assigned them to B. No transfer was executed, and no notice of the assignment was given to the company, which subsequently went into liquidation. N became insolvent. B sued the liquidators of the company for the amount due in respect of the five shares on the first distribution of assets: *Held* that, at the time of N's —, the plaintiff was the true owner of the shares within the meaning of 11 and 12 Vic. c. 21 s. 23; and that as he had omitted to give notice to the company of the assignment to him, and as he had procured no transfer to be executed in his favor which the company under their articles of association were bound to recognise, he had consented that the shares should remain in the order and disposition of N, and consequently the shares, and the right to receive any distribution of assets in respect of them, rested upon N's — in the Official Assignee. (O. J.) I. L. R. 2 Bom. 542.

7. *Semble.* The principle that a person who is under an obligation to convey property to another is, in a Court of Equity, a trustee of such property for the latter, does not apply in cases where the reputed ownership clause (s. 23) of the Insolvent Act is in question. (O. J.) *Ib.*

8. The Deputy Commissioner of Akyab, sitting as District Judge, has power to entertain applications under Act X of 1877 chap. XX. S. 6 (*d*) of that Act interposes no obstacle in the way of his dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the order of Rangoon" sitting as an Insolvent Court in Akyab within the meaning of that section. I. L. R. 4 Cal. 94.

9. As the Indian Insolvent Act (11 and 12 Vic. c. 21) s. 40 incorporates all existing and future enactments passed in England for the purpose of determining what debts may be proved; and as by s. 15 of the English Act of 1869, property held by the bankrupt in trust for others is not the property of the bankrupt divisible among his creditors; such property cannot be regarded as having vested in the Official Assignee, and a *cestui que trust* creditor is not entitled to come in and prove; because what is being administered in — is the insolvent's estate, of which property of this nature does not form part. (O. J.) I. L. R. 2 Mad. 15.

INSOLVENCY (*continued*).

10. A person applying under Act X of 1877 s. 344 must satisfy the Court that his case comes within the provisions of s. 351, and the burden of proof lies upon him. An order dismissing such an application is appealable under s. 588 (*n*). I. L. R. 4 Cal. 888. *Followed in* I. L. R. 6 Cal. 168. *But see* 17 *post*.

11. A witness summoned for examination under 11 and 12 Vic. c. 21 s. 36 is not entitled, as of right, to be represented by Counsel. The attendance of Counsel on his behalf, is a matter of practice to be settled by the Judge at his discretion. (O. J. Ap.) I. L. R. 3 Bom. 270.

12. As soon as an order is made under 11 and 12 Vic. c. 21 s. 7, any rights of property which an insolvent may have possessed at the date of his petition in — vest in the Official Assignee, and he alone is competent to sue for the purpose of enforcing these rights. (O. J.) I. L. R. 3 Bom. 437.

13. Where the defendants for the first time in second appeal objected to the plaintiff's right to sue on the ground of his having taken the benefit of the — Act, the objection was entertained by the High Court upon admission, by the plaintiff, of the fact of his —. (O. J.) *Ib.*

14. Arrears of maintenance, included in the schedule filed by an insolvent, are a debt or liability within the meaning of 11 and 12 Vic. c. 21 s. 13; and an insolvent, who has obtained a protection order, is not liable for arrest or imprisonment in respect of such. *Quære* whether the protection order protects the insolvent from proceedings in respect of any maintenance accruing subsequently to the filing of the schedule. (O. J.) I. L. R. 5 Cal. 536.

15. A trader, residing out of the jurisdiction of the High Court, but carrying on business at Calcutta by a gomashta, can be adjudicated an insolvent under 11 and 12 Vic. c. 21 s. 9 if his gomashta stops payment and closes and leaves his usual place of business, or does any act which, if done by the trader himself, would have rendered him liable to be adjudicated an insolvent. (O. J.) I. L. R. 5 Cal. 606.

16. Where, two days before a person was adjudicated an insolvent and his property had by order vested in the Official Assignee under 11 and 12 Vic. c. 21, such person had, not spontaneously, but in consequence of being pressed, assigned to a particular creditor certain property: *Held* that such assignment was not "voluntary" within the meaning of s. 24; but *quære* whether that section was relevant to the case, as the vesting order was not passed on a petition by the insolvent for his discharge. I. L. R. 2 All. 474.

17. There is no appeal from an order made under Act X of 1877 s. 351 refusing to grant an application to be made an insolvent. The appeal allowed under s. 588 cl. 17, so far as an order under s. 351 is concerned, is on behalf of the judgment-creditor only. I. L. R. 5 Cal. 719. *Dissented from in* I. L. R. 6 Cal. 168, and *see* 10 *ante*.

18. 11 and 12 Vic. c. 21 s. 9 which empowers a creditor of any person, who shall lie in prison for debt for a period of 21 days, to petition the Court to adjudge such person an insolvent, prescribes no limit to the time within which such petition must be presented. It may be presented by the creditor at any time subsequently to the imprisonment. (O. J.) I. L. R. 4 Bom. 489.

19. The effect of the words "It shall be lawful" in 11 and 12 Vic. c. 21 s. 9 are imperative, and do not give the Court a discretion in the exercise of which it may refuse an order of adjudication applied for under that section. (O. J.) *Ib.*

20. The Court for the relief of insolvent debtors at Bombay has jurisdiction to review its own orders. (O. J.) *Ib.*

21. The words in 11 and 12 Vic. c. 21 s. 51 relating to debts contracted "without having any reasonable or probable expectation at the time when contracted of paying them," are pointed, not at the case of a man who incurs a debt knowing that he cannot repay that debt. The words in the same section, "if it shall appear that the insolvent's whole debts so greatly exceeded his means of providing for the payment thereof during the time when the same were in course of being contracted, reference being had to his actual and expected property as to show gross misconduct in contracting the same," apply not to this or that debt, or class of debts, but to all the debts, contracted for some years past; and under the circumstances of the case afford ground not for excepting any specified debt under s. 51, but for deferring the discharge under s. 47. (O. J.) I. L. R. 6 Cal. 70.

22. The insolvents carried on business as bankers and commission agents, receiving the money of their constituents, on deposit, for investment or for remittance, charging a commission on each transaction and allowing 4 per cent. interest on deposits. An opposing creditor, one of their constituents, sent them in April 1880 a letter instructing them to invest Rs. 40,000 in Municipal debentures. The insolvents failed in November, and it was found on the evidence that they could not have procured the desired quantity of Municipal debentures without paying more than the market price for them. They purchased Rs. 18,000 worth of such debentures, and were debtors to the opposing creditor for the balance: *Held* that the money was in their hands as bankers and not as agents; and this being so they were not bound to keep the Rs. 40,000 separate from their own funds, nor even after the letter received in April to set it apart for investment. (O. J.) *Ib.*

23. A *mukadam* is not a trader within the meaning of the Indian Insolvent Act 11 and 12 Vic. c. 21, and is not, therefore, entitled to obtain a discharge, in the nature of a certificate, under s. 60 of that Act. (O. J.) I. L. R. 5 Bom. 1.

See Arbitration 19.
Bill of Exchange 3.
Hoondee 11.
Principal and Surety 12.
Small Cause Court 19, 21.

Instalments.

1. A obtained a decree in 1858 against B, but did not apply for execution till 1864, when B, although objecting that the decree was barred, presented to the Court, under arrangement with A, a petition acknowledging a certain sum to be due, and executed a *kistbundee* agreeing to pay the debt by monthly —. B paid several —, but did not do so on one occasion until execution was taken out against her. On her death shortly afterwards, execution was taken out against her representatives. The representatives objected that the decree was barred, and that the *kistbundee* could not be substituted for the decree. The objection was, on appeal to the High Court, allowed. A then brought a suit on the *kistbundee*: *Held* that, at the time the *kistbundee* was entered into, the decree was under the Limitation law then in force, capable of being executed, and there was therefore valid consideration for the *kistbundee*; and that, even had there been no valid consideration for the *kistbundee*, the principle laid down in Act IX of 1872 s. 25 cl. 3, and which prevailed before the passing of that Act, would have saved the *kistbundee* from becoming void for want of consideration. I. L. R. 4 Cal. 500.

2. *Quære* whether "a decree for the payment of money" means merely what is commonly known as a money-decree, or includes a decree in which a sale is ordered of immoveable property in pursuance of a contract specifically affecting such property, within the meaning of Act VIII of 1859 s. 194 and Act X of 1877 s. 210. I. L. R. 2 All. 129.

3. Where a Court, on the ground that the defendant was "hard pressed" directed the amount of a decree to be paid by — extending over ten years, and allowed only one half of the usual rate of interest: *Held* that there was no "sufficient reason" for directing payment of the amount of the decree by —, and that such Court had exercised its discretion injuriously to the plaintiff by the length of the period over which the — were extended, and by allowing a rate of interest less than the ordinary rate. *Ib.*

4. Act X of 1877 s. 210 is not applicable in a suit for the recovery of the amount of a bond-debt by the sale of the property hypothecated by such bond. In such a suit, therefore, the Court cannot direct that the amount of the decree shall be payable by —. I. L. R. 2 All. 320.

5. A debt being presently due, an agreement to pay it by —, with a stipulation that, on default, the creditor may demand immediate payment of the whole balance due with interest, is not to be relieved against in equity. Such a stipulation is not in the nature of a penalty, inasmuch as its object is only to secure payment in a particular manner. I. L. R. 4 Bom. 96.

INSTALMENTS (*continued*).

6. The defendant executed to the plaintiff a bond payable by —, and expressly stipulating for the payment of the whole amount on failure to pay any instalment on the day fixed. He paid the first instalment, but made default in paying the second, which fell due on 3rd August 1878. On 20th August plaintiff sued to recover the whole balance due on the bond. Defendant admitted the bond, but pleaded tender of the amount of the second instalment soon after the due date, and prayed for payment by — without any interest. The first Court passed a decree in the plaintiff's favor for the amount claimed with costs, but ordered defendant to pay Rs. 100 and the costs at once, and the balance by yearly — of Rs. 100 each, with interest at 6 per cent. till payment. The District Judge, in appeal, affirmed the decree, with a slight variation as to interest, which he directed the defendant to pay on over-due — only: *Held* by the High Court on second appeal that neither of the lower Courts had jurisdiction, without the consent of the parties, to substitute, for the contract made by them, terms which the Court preferred; also, that plaintiff was entitled to sue on the day after that on which the default was made, *viz.*, on the day after that fixed for the payment of the instalment, and that the Subordinate Judge had no power to rule the contrary. *Ib.*

See Interest 15.
Lease 1*a*, 9.
Limitation 21, 27.
" (Act XIV of 1859) 21.
" (Act IX of 1871) 58, 85, 86, 101.
" (Act XV of 1877) 13, 24.
Mortgage 30.
Principal and Surety 3.
Promissory Note 1.
Will 59.

Insurance.

1. In a policy of — effected in Bombay upon goods shipped from Calcutta to Jeddah, two clauses were inserted in writing, the rest of the policy being in the ordinary English form. The first written clause was in English as follows:—"Warranted free of particular average, unless stranded, sunk, or burnt." The second was written on the margin of the policy in the Guzerathee language, and was to the following effect: "— upon the goods to be without damage. The loss arising from damage is to be on the head of the owner of the goods": *Held* that the underwriters of such a policy are liable to the insurer for a particular average loss where the vessel in which the insured goods are shipped is stranded, sunk, or burnt. (O. J. Ap.) I. L. R. 2 Bom. 550.

2. Policies of — between natives of India (those, at least, which do not contain the words "interest or no interest") are to be construed in the same way as such instruments have been uniformly construed by the general law merchant in Western Europe, *viz.* as contracts of indemnity. (O. J.) I. L. R. 4 Bom. 305.

3. Having regard to the long-established practice, in the port of Bombay, of insuring risks on loans given by merchants to traders who carry to the African and Madagascar ports goods for sale there, and with the proceeds purchase fresh goods to be similarly disposed of in the home ports, such loans being made on what is termed "*arung*," *i.e.* money borrowed on the condition that it is not to be repaid except in case of the safe arrival of the goods in the home ports on the return voyage, in which event the loan becomes repayable with interest at a high rate: *Held* that the interest of the lender in the goods on board a ship on her return voyage to India is an insurable interest. *Semble* that an *arung* loan does not give the lender a charge on the goods. (O. J.) *Ib.*

4. A policy of marine — on goods is not invalid by reason of its having been effected subsequently to the loss of the goods, although the policy does not contain the words "lost or not lost." (O. J.) *Ib.*

5. Where insurers on receiving notice of a claim made against them under a policy of — distinctly repudiate their liability and deny that any claim exists against them, or that the party serving such notice has any right to recover against them, there arises an immediate right to sue, and the insured is not bound to wait for the expiration of six months before taking proceedings to enforce his claim. (O. J.) I. L. R. 4 Bom. 314.

6. Where it appeared upon evidence that goods on board a ship that was wrecked on a voyage from Kurrachee to Bombay, although much damaged by sea water, were nevertheless of such merchantable value as to make it worth while to send them on to their port of destination: *Held*, in an action against the insurers of the goods, that no claim for constructive total loss was maintainable. (O. J.) *Ib.*

7. In an action upon a policy of marine —, which contained the clause "warranted free of particular average unless sunk or burnt," it was contended for the plaintiffs that the ship had "sunk," and that the damage to the goods was therefore covered by the policy: *Held* that, where a vessel runs aground and lists over, and is in consequence covered by the high tide, which causes damage to goods on board, it cannot be said that she has "sunk" within the meaning of the words as used in a policy of —, and therefore that a claim for particular average cannot be sustained under the clause above mentioned. (O. J.) *Ib.*

See Railway 7.
Stamp Duty 6.

Interest.

1. Where in a previous suit on a bond (which suit was lost on account of want of jurisdiction) plaintiff sued for a specific sum and for — as from a certain date, he was declared, in a subsequent suit instituted by him on the same bond, entitled to — on the bond, only from the date from which he sued for it in the first suit to the date of the present decree. (P. C.) 2 P. C. R. 76 (10 W. R. P. C. 55; 11 Moo. 277).

2. Where a payment was made on account of a bond debt (the amount paid being less than the — due): *Held* that the payment ought to be deducted from the —; Reg. XV of 1793 s. 6 being construed to apply to cases where the — at the time of suit had accumulated so as to exceed the principal. (P. C.) 2 P. C. R. 461 (8 B. L. R. 110).

3. How the Privy Council construed the following words in a previous order passed by them: "the plaintiff is to have judgment for his moiety with — at the full legal rate." (P. C.) 2 P. C. R. 754 (19 W. R. 41).

4. In the absence of any special directions it cannot be presumed that it was the intention of the Appellate Court to make an order *nunc pro tunc*, which would have the effect of making a rest at the date of the decree of the Court of first instance and of giving compound — awarded from that date. (P. C.) *Ib.*

4*a*. Where a decree is silent as to future —, — cannot be recovered by proceedings in execution of the decree, but it may be recovered by damages by a separate suit. (P. C.) 3 P. C. R. 190 (24 W. R. 193; 15 B. L. R. 383; L. R. 2 I. A. 219). *See also* 3 P. C. R. 514 (L. R. 5 I. A. 78; I. L. R. 3 Cal. 602).

5. Where an order of the Privy Council is silent as to — upon the costs of the decree, the Indian Court which has to execute the decree has no power to direct payment of those costs with —. (P. C.) 3 P. C. R. 405 (L. R. 4 I. A. 137; I. L. R. 3 Cal. 161).

So also as to a decree of an Indian Court. I. L. R. 3 Cal. 351.

6. *Semble*. The existing practice as to Orders in Council as well as to decrees of the Indian Courts is that — cannot be given in execution unless it is specially directed to be given. (P. C.) *Ib.*

7. As to — on mesne profits, referring to the proviso at the end of Act XXXII of 1839 and to the resolution of the Sudder Court in 1850, the Privy Council awarded — upon mesne profits from the commencement of suit to the date of decree. (P. C.) 3 P. C. R. 495 (L. R. 5 I. A. 31; I. L. R. 3 Cal. 654). *See also* I. L. R. 4 Cal. 882.

8. The Court must exercise a judicial discretion in giving effect to Act XXIII of 1861 s. 10, so as not to grant an inordinate and unusual rate of —. The rate of — to be

INTEREST (*continued*).

allowed on a principal debt up to date of decree ought to be that, if any, which has been fixed by contract, express or implied, between the parties. Accordingly, in this case, the rate of — allowed among the sharers of joint family property, which was the rate prevailing in the Mofussil, *viz.* 12 per cent., was approved of. (P. C.) 3 P. C. R. 788 (L. R. 7 I. A. 196).

9. The rule of Hindoo law that more — than the principal cannot be recovered, has not been abrogated by Act XXVIII of 1855 in the case of Hindoos in the Presidency towns, but is not applicable to the Mofussil Courts which are governed by Act VI of 1871 s. 24. I. L. R. 1 Cal. 92 (24 W. R. 106).

It does not apply to an amount recoverable in execution of the decree of a Civil Court. I. L. R. 1 Bom. 73. *See* 12 *post.*

10. There is no rule of law that, upon a contract for the payment of money on a day certain with — at a fixed rate down to that day, a further contract for the continuance of the same rate of — is to be implied. Accordingly — was awarded up to the date on which a bond fell due at the rate (18 per cent.) mentioned in the bond, but at 6 per cent. from that date. 25 W. R. 189 (I. L. R. 2 Cal. 41). *But see* I. L. R. 1 All. 603 and *post* 17, 19.

11. The defendant and one D, on the 6th April 1875, gave to the plaintiff, a money-lender, a promissory note, by which they jointly and severally promised to pay the plaintiff on the 6th September Rs. 400 "for value received for cash in hand paid on signing and delivering this bond; should we neglect or fail to pay this amount on due date, then only shall it carry — from and on due date to date of payment at the defaulting rate of 10 per cent. per mensem." At the date of the note the defendant and D were in the plaintiff's debt in respect of other promissory notes, and a sum of Rs. 100 was deducted from the amount of the note of the 6th April in respect of one of those which was given up and in respect of — on three others. A further sum of Rs. 125 was deducted as — in advance for the five months previous to the due date of the note, and the balance was Rs. 175, which was paid by cheque to D. D died before the note became due. In a suit brought to recover Rs. 400 principal and Rs. 400 — on the promissory note, on default being made in payment: *Held* that this was not a case in which a certain sum was agreed to be paid on the breach of contract, and therefore Act IX of 1872 s. 74 did not apply. The stipulation to pay — at the "defaulting rate" was not in the nature of a penalty. *Held* also that, looking at the nature of the transaction, the note contained a false statement of the consideration, which amounted only to Rs. 275; and there being nothing to show that the defendant understood the real nature of the transaction, the rate of — being exorbitant, and the consideration inadequate, the transaction was not one which ought to be enforced by a Court of Equity. (O. J.) I. L. R. 2 Cal. 202.

The Court will afford no protection to persons who wilfully and knowingly enter into extortionate and unreasonable bargains. It is only where a person has entered into an extortionate bargain, and it is shown that he was in ignorance of the unfair nature of the transaction, that the Court is justified in interfering. (O. J.) I. L. R. 4 Cal. 137.

12. In this case — was allowed not exceeding the principal, following the rule of Damdupat. I. L. R. 1 Bom. 577. *See* 9 *ante.*

The Hindoo rule of Damdupat does not operate when the defendant is other than a Hindoo. I. L. R. 3 Bom. 131.

It is applicable in the case of a mortgage by a Hindoo where no account of rents and profits is to be taken. I. L. R. 3 Bom. 312.

13. Under Reg. XV of 1793 s. 6, — claimable under a bond must not exceed the amount of principal. Reg. XVII of 1806 s. 3 is not inconsistent with the application of the former Regulation, inasmuch as the latter Regulation refers to *rates* of —, and the former to *accumulations* of — irrespective of rate. I. L. R. 1 All. 344.

14. Upon a contract for the payment on a day certain of money borrowed with — at a certain rate down to that day, a further contract for the continuance of the same rate of — after that day until actual payment is not to be implied. When, therefore, the agreed rate of — is excessive and extraordinary, the Court will reduce the rate to a reasonable amount. I. L. R. 3 Bom. 131.

15. In exercise of the discretion given by Act VIII of 1859 s. 194 the Court of first instance gave a decree to the plaintiff making the amount awarded payable by instalments, but gave no — after the institution of the suit. The Appellate Court amended the decree by awarding — from the institution of the suit at 6 per cent. per annum, the rate originally contracted for being twenty-four per cent. per annum: *Held* that although the stipulated rate was properly awardable, the award of the lower rate was not illegal or beyond the competence of the Court below, with whose discretion the High Court will not interfere. I. L. R. 3 Bom. 202.

16. Every arrear of rent, unless it is otherwise provided by an agreement in writing, is liable to bear — at 12 per cent. from the time when it, or each instalment of it, became due. The discretion which a Court has to refuse — can only be exercised upon very clear grounds. The mere non-enforcement by a landlord, even for a series of years, of his right to — upon arrears of rent, does not amount to a waiver of such right. I. L. R. 5 Cal. 102.

17. Where a bond for the payment of certain money within a certain time did not contain any agreement fixing the rate of — to be paid after the date it became due: *Held* that the question as to the amount of — to be allowed after that date should be treated as one of damages, and that having regard to the length of time that had elapsed since the bond ran out to the date on which the suit thereon was instituted, — at the rate of eight annas per cent. per mensem was an equitable rate to allow after the date the bond became due. *Held* also that, but for the plaintiff's laches, the rate agreed by the defendant to be paid under the bond (one rupee per cent. per mensem) was a reasonable basis on which to estimate the subsequent damages. I. L. R. 2 All. 617.

18. *Held* that a stipulation in a bond that the — on the principal sum lent should be paid six-monthly, and, if not paid, should be added to the principal and bear — at the same rate, was not one of a penal nature. I. L. R. 2 All. 621.

19. D gave M a bond for the payment of certain moneys on a certain date and for the payment of — on such moneys at Rs. 1-12-0 per cent. per mensem, stipulating to pay the — six-monthly, and in default "to pay compound — in future": *Held* (1) that the stipulation to pay compound — could not be regarded as a penal one; and (2) that the bond contained an agreement to pay — after the due date at the rate payable before that date, and that if it had been otherwise, the obligee was entitled to — after that date at that rate, such rate not being unreasonable. I. L. R. 2 All. 639.

20. The obligors of a bond agreed to pay the principal amount by instalments without —, and in case of default to pay — at the rate of Rs. 3-2-0 per cent. per mensem, and hypothecated immoveable property as security for the payment of the bond-debt, sufficient for the discharge of the debt, and furnished a surety: *Held*, in a suit on the bond, that, the principal amount being payable in the first instance without —, the stipulation to pay — at the rate of Rs. 3-2-0 per cent. per mensem, in case of default, was a penal one, and reasonable — should only be allowed. I. L. R. 2 All. 715.

21. Defendants on 8th May 1869 gave plaintiff a bond for the payment of Rs. 2,000 on 16th February 1870. This amount consisted of two items, *viz.* Rs. 1,650 principal, and Rs. 350 — in advance at the rate of two per cent. per mensem for the period between the date of the bond and its due date. The bond provided that, in default of payment on the due date, — on the whole amount of Rs. 2000 should be paid at the rate of two per cent. per mensem from the date of the bond: *Held* in a suit on the bond in which — was claimed at the rate of two per cent. per mensem from the date of the bond, that this provision was penal, and the penalty ought not to be enforced. I. L. R. 2 All. 769.

22. According to Hindoo law, arrears of — more than sufficient to double the debt are not recoverable, and the law upon this point was not affected by Act XXVIII of 1855, for the repeal of the Usury Laws, nor by Act IX of 1872 s. 10. (O. J.) I. L. R. 5 Cal. 867.

23. *Semble.* The rule of Hindoo law in question has not properly anything to do with the legality or illegality of any contract, but is rather a rule of limitation. (O. J.) *Ib.*

INTEREST (*continued*).

See Ancestral Property 1.
Attorney and Client 1.
Champerty 5.
Contract 15.
Enhancement 23.
Gift 2.
Hoondee 1.
Instalments 3, 5, 6.
Insurance 2, 3.
Joint Stock Company 8.
Jurisdiction 29.
Limitation 18.
,, (Act XIV of 1859) 21.
,, (Act IX of 1871) 32, 33, 71, 87, 92.
,, (Act XV of 1877) 4.
Mesne Profits 4, 10, 11.
Mortgage 4, 7, 15, 18, 19, 21, 30, 34, 35, 62, 87, 88, 106, 108.
Municipal Debentures 1.
Oudh Talookdars Relief 1.
Partition 17.
Principal and Surety 3, 4, 7.
Registration 21, 27, 32.
Small Cause Court 23.
Stamp Duty 15.
Stolen Property 2.
Title Deeds 1.

Interlocutory Order.

See High Court 20, 32.
Practice (Commissions) 5.
Privy Council 43.

Intermediate Holder.

See Enhancement 1, 12.
Land Dispute 3.
Registration 13.
Reimbursement 1.
Under Tenure 1.

Interrogatories.

See Practice (Suit) 10, 13, 14, 15, 16.

Intervenor.

See Court Fees 16.
Declaratory Decree 11.
Estoppel 13.
Land Dispute 8.
Mortgage 120.
Privy Council 27, 33.
Relief 2.
Res Judicata 15, 19, 40.

Intestate.

See Certificate 2.
Execution of Decree 21.
Gift 2.
Hindoo Law (Inheritance and Succession) 35.
Letters of Administration 1.
Oudh Estates 10, 12.
Succession 3, 4, 5.
Will 10*a*, 27, 46, 61, 64.
Zemindaree 1.

Irregularity.

See Arbitration 8, 25.
Attachment 8, 9.
Criminal Proceedings 3.
Dismissal of Suit or Appeal 1.
Evidence (Admissions and Statements) 10.
Execution of Decree 6.
High Court 28.
Jurisdiction 39, 57.
Lease 9.
Practice (Appeal) 14, 30.
,, (Criminal Trials) 2.
Privy Council 24.
Putnee 2.
Res Judicata 31.
Sale (in Execution of Decree) 8, 15, 17, 18, 20, 34, 37, 45.
Sheriff 6.
Stamp Duty 8.

Irrigation.

See Embankment 1.
Limitation (Act IX of 1871) 5, 36.
Mischief 1.
Right to Water 1, 2.
Tank 1.

Island.

See Churs.

Issues.

1. Principles upon which the Courts in India are to decide — depending before them. (P. C.) 2 P. C. R. 29 (18 W. R. 81 *n.*; 6 Moo. 393).

2. Where the Privy Council remanded a case for ascertaining the amount of maintenance to be awarded out of an estate, and for decision under Act VIII of 1859 s. 351, it was held that it could not be objected that no — were directed. (P. C.) 2 P. C. R. 206 (11 W. R. P. C. 33; 2 B. L. R. P. C. 72; 12 Moo. 495).

3. Observations on the settling of — by Courts of original jurisdiction under the Code of Civil Procedure, and on the duty of an Appellate Court when an objection is made before it that the first Court did not lay down — in a case. (P. C.) 2 P. C. R. 387 (15 W. R. P. C. 15; 13 Moo. 573; 6 B. L. R. 148). *See* 2 P. C. R. 899 (20 W. R. 377; 12 B. L. R. 304; L. R. I. A. Sup. 212).

4. Duty of a Court (whether original or Appellate) to act upon the — and evidence in the case. (P. C.) 2 P. C. R. 678 (18 W. R. 183).

5. When a case is remanded for trial, the amending of the — or the framing of additional —, under Act VIII of 1859 s. 141, may be done at the request of either party by the Appellate Court or the Court below. 25 W. R. 425 (I. L. R. 2 Cal. 1).

6. Although under certain circumstances a Judge at a trial may allow amendments or raise — other than those settled, yet, when a Judge at the settlement of — has refused to raise a certain issue, that question ought not to be re-opened at the trial, and the Judge at the trial ought not to modify the — so as to re-open any question which the Judge settling the — has decided. (O. J.) I. L. R. 4 Cal. 572.

7. The duty of a Judge in clearly ascertaining the real points in dispute, and framing issues accordingly, pointed out. I. L. R. 3 Bom. 210.

8. A Judge is not bound to make any amendment in the — of a case except for the purpose of more effectually putting in issue and trying the real question or questions in controversy as disclosed by the pleadings on either side. I. L. R. 5 Cal. 64.

Issues (*continued*).

9. Where no injustice would be done to either party, the Courts, in the exercise of their discretion, under special circumstances, may allow — to be raised upon matter which does not strictly come within the proper scope of the pleadings. The power to allow such amendments is given by the first part of Act X of 1877 s. 149 corresponding with the first part of Act VIII of 1859 s. 141. *Ib.*

See Estoppel 8.
High Court 32.
Hindoo Law (Religious Ceremonies) 5.
Plaint.
Practice (Appeal) 1, 3.
,, (Review) 11.
Res Judicata 14.
Special Appeal 2.
Title 1.

Issumnovisee.

See Ghatwals 1.

Jagheer.

1. In a suit to recover possession of certain lands as granted as a — tenure by plaintiff's ancestors to one P and his lineal descendants, and that such descendants had failed, the *onus* is on plaintiff to prove the grant alleged in his plaint. (P. C.) 2 P. C. R. 783 (19 W. R. 140).

2. A — must be taken, *primâ facie*, to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary. (P. C.) L. R. 6 I. A. 54 (I. L. R. 3 Bom. 186).

See Desai 1.
Service-Tenure 1, 4, 8.

Jains.

1. Calcutta Punch of the Degumbery sect of —. *See* Endowment 32.

See Custom 13.
Hindoo Law (Adoption) 17, 33, 34.

Jaintia Hills.

See Jurisdiction 10.

Jewels.

See Bailment 1, 2.
Streedhun 5.
Succession 5.
Will 61.

Jews.

See Will 21.

Jheel.

See Julkur 7.

Joinder of Causes of Action.

1. Where the plaintiffs in a suit were permitted to withdraw from the same with a view to bring a fresh suit which should include a portion, which had been omitted, of the claim arising out of the cause of action, and such fresh suit was brought, the additional portion of the claim in that suit was held not barred under Act VIII of 1859 s. 7. I. L. R. 1 Cal. 324.

2. Plaintiffs sued to enforce an agreement for the execution of a conveyance of certain immoveable property, and for the possession of such property, making the party to such agreement and the persons who had, subsequently to the date of the same, purchased such property in execution of decree, defendants in the suit, on the allegation that such persons had purchased in bad faith and with notice of the agreement: *Held*, with reference to Act I of 1877 s. 27, that, under such circumstances, there was not necessarily a mis —. I. L. R. 1 All. 555.

3. In a suit instituted against six different parties, plaintiff prayed for khas possession of a four-anna share in a certain lot, or, in the alternative, for a decree for arrears of rent against the defendants, or such of the defendants as should on enquiry appear to be respectively liable. It appeared that plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears: *Held* (with reference to Act X of 1877 ss. 31 and 45) that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for —. I. L. R. 4 Cal. 949.

4. Part of the purchase-money had been advanced by the plaintiffs to the defendants, for which the defendants had given their promissory notes; and the plaint contained a prayer that the defendants be ordered to pay over the amount of the notes: *Held* that there was no mis — within the meaning of Act X of 1877 s. 44 rule (*a*). (O. J. Ap.) I. L. R. 6 Cal. 328.

See Court Fees 10.
Jurisdiction 58.

Joinder of Charges.

1. Act X of 1872 s. 453 simply places a statutory limit on the number of charges which may legally form part of a single trial. There is nothing in the section, however, to prevent an accused from being separately charged and tried on the same day for any number of distinct offences of the same kind committed within the year. (Cr.) I. L. R. 3 Cal. 540.

See Commitment 4.
Criminal Trespass 6.
Practice (Criminal Trials) 1.

Joinder of Parties.

1. Persons acting as agents only in the transactions which formed the subject of this action, and being in no way personally liable to the plaintiff, should not have been joined as defendants. (P. C.) 3 P. C. R. 710 (L. R. 7 I. A. 8; I. L. R. 6 Cal. 218).

2. Under Act VIII of 1859 s. 73, a person is not liable to be added as a party to the suit, although he may be "likely to be affected by the result," unless he is also entitled to or claims some interest in the subject-matter of the suit. (O. J.) I. L. R. 2 Cal. 472.

3. Non-joinder of parties. *See* Defect of Parties.

4. In a suit by the purchaser of goods by sample against the vendors for damages, on the ground that the bulk did not correspond with the sample, the vendors applied, under Act X of 1877 s. 32, to add the vendor to them on the same samples of the goods as a defendant, alleging that the question between the plaintiffs and themselves was the same as that between themselves and their vendor: *Held*, refusing the application, that the plaintiffs "ought" not to have the vendor to the defendants made a party to the suit, and that his presence was not "necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." (O. J.) I. L. R. 4 Cal. 355.

Followed in a case where two suits against K for possession of the property of B deceased were instituted in the Court of a Subordinate Judge by parties claiming adversely to one another as heirs to B, and the Judge, on the applications of the plaintiffs in these suits, under s. 32, added the plaintiffs in the first suit as defendants in the second, and the plaintiffs in the second suit as defendants in the first. I. L. R. 2 All. 738.

JOINDER OF PARTIES (*continued*).

5. Reading ss. 28, 29, and 32 of the above Act together, where an application is made under s. 32 for the addition of a person whether as plaintiff or defendant, such person should, as a general rule, be added only where there are questions directly arising out of and incidental to the original cause of action, in which such person has an identity or community of interest with the original plaintiff or defendant. I. L. R. 2 All. 738.

6. In a suit for the partition of joint family property, the mortgagees of the right, title, and interest of the plaintiff applied under Act X of 1877 s. 32 to be added as parties: *Held* that their presence was not necessary in order "to enable the Court effectually and completely to adjudicate and settle all the questions involved in the suit" within the meaning of the section. (O. J.) I. L. R. 5 Cal. 882.

7. The above section does not contemplate any application to the Court by the person proposed to be added. (O. J.) *Ib.*

8. An order refusing an application under Act X of 1877 s. 32, by a person to be added as a defendant in a suit, is not applicable. I. L. R. 2 All. 904.

See Bill of Exchange 2.
Dismissal of Suit or Appeal 1.
Enam 3.
Enhancement 4.
Hindoo Widow 30.
Hoondee 3, 8.
Karanavan 5.
Partnership 14, 18.
Practice (Appeal) 19.
Relief 4.
Rent 7.
Res Judicata 30.
Slander 1.
Will 31.

Joint Family.

1. A Mahomedan family may adopt the customs of Hindoos subject to any modification of those customs which the members may consider desirable. A Judge is not bound, as a matter of law, to apply to a Mahomedan family living jointly all the rules and presumptions which have been held by the High Court to apply to a joint Hindoo family. It rests with him to decide in any particular case how far he should apply those rules and presumptions. I. L. R. 3 Cal. 694.

See Interest 8.
Joint Hindoo Family.
Jurisdiction 12.
Manager 3, 4.

Joint Hindoo Family.

See Hindoo Law (Coparcenary).

Joint Stock Company.

1. The power of sanctioning a compromise allowed to the Courts by Act X of 1866 s. 174 should be exercised with great caution. The compromise may be entered into before the list of contributories has been settled or the liabilities or competence of the shareholders has been ascertained. (P. C.) 2 P. C. R. 250 (12 W. R. P. C. 27; 3 B. L. R. P. C. 8; 13 Moo. 15).

2. Ratification by — of acts done by the Directors in excess of their authority, cannot authorize them to do similar acts in future. Notice of reports to be presented at half yearly meetings. (P. C.) 3 P. C. R. 394 (L. R. 4 I. A. 86; I. L. R. 3 Cal. 280).

3. Distinction pointed out between the case of a person who agrees to take shares in a projected — upon the faith of a prospectus, and one who does so upon the faith of a document purporting to be the proposed memorandum of association of such —. (O. J. Ap.) I. L. R. 1 Bom. 320.

4. Where the holder of shares in a — was described in the list of contributories, against whom a balance order by the Court of Chancery had been made, as "D B cotton merchant," and as being sued "in his own right:" *Held* that the plaintiff company could not be allowed to give evidence that the shares were in fact held by a firm consisting of two individuals, B Z and D H, nor could the plaintiffs be allowed, at the hearing of the appeal, to amend their plaint originally framed against both partners with a view to making the firm liable for the amount of the calls, so as to sue B Z only, who alone was alleged to have signed the articles and memorandum of association in the name of D B, and to make him personally liable as the holder of the shares. I. L. R. 2 Bom. 116.

5. Notice of an appeal against any order or decision made or given in the matter of the winding-up of a — by the Court, must under Act X of 1866 s. 141 be given to the respondent within three weeks after the order or decision complained of has been made. The Court has power to extend the time for giving the notice after the three weeks have expired, upon special circumstances being shown. (O. J. Ap.) I. L. R. 4 Cal. 704.

6. Under the special circumstances of the case, the sanction of the Court was given, under Act X of 1866 s. 175, to certain special resolutions passed by the shareholders of a — for transferring its assets to another —, but subject to the value of the interest of two dissenting shareholders being paid or adequately secured; such order to be without prejudice to any question between the creditors of the old company and the dissenting shareholders. (O. J.) I. L. R. 3 Bom. 299.

7. Liability of a — under Act X of 1866 s. 47 on bills of exchange or promissory notes drawn on their behalf, or on account of persons acting under their authority. (O. J.) I. L. R. 3 Bom. 439.

8. No. 24 of the Rules, dated 3rd August 1866, made by the High Court under the powers given by Act X of 1866 s. 189, is *ultra vires* so far as it allows interest on debts or claims subsequent to the date of the order to wind up a — to creditors whose debts or claims do not carry interest. (O. J.) *Ib.*

9. A limited company formed in England under the English Companies' Act, 1862, and having its registered office in England, but which has its principal place of business in Calcutta, and is managed exclusively by directors in Calcutta and the business of which is carried on exclusively in India, can be wound up by the High Court. (O. J.) I. L. R. 5 Cal. 888.

See Bill of Exchange 3, 4.
Champerty 5.
Guarantee 2.
Insolvency 6.
Limitation (Act IX of 1871) 14.
Partnership 5, 11.

Judge.

1. A — cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts. (P. C.) 3 P. C. R. 304 (26 W. R. 55; L. R. 3 I. A. 259).

2. An Officer who acts as —, if entrusted at the same time with administrative duties, ought to be most scrupulous in the endeavour to form his own opinions independently. He ought not to refer to his superiors, whether judicial or administrative, for opinions to form his own judgments as a —. If any information from a superior is considered necessary, he ought to be examined as a witness. (P. C.) 3 P. C. R. 427 (L. R. 4 I. A. 178; I. L. R. 3 Cal. 522).

3. No man should sit as a — in a case in which he has a substantial interest. (Cr.) 25 W. R. Cr. 57 (I. L. R. 2 Cal. 23).

See Issues.
Jurisdiction 19, 30.
Magistrate 1, 2.

Judgment.

1. A former —, which is not a — *in rem*, nor one relating to matters of a public nature, is not admissible in evidence in a subsequent suit, either as a *res judicata*, or as proof of the particular point which it decides, unless between the same parties or those claiming under them. (F. B.) I. L. R. 6 Cal. 171.

2. In a suit between A and B, the question was, whether C or D was the heir of H. If C was the heir of H, then A was entitled to succeed; otherwise not. The same question had been raised in a former suit brought by X against A, and decided against A; and this former — was admitted in evidence in the suit between A and B, and dealt with by the Courts below as conclusive evidence against A upon the point so decided: *Held* that the former — was not admissible as evidence in the suit between A and B, either as "a transaction" under Act I of 1872 s. 13 or as "a fact" under s. 11, or under any other section of that Act. (F. B.) *Ib.*

3. In a suit by A against the obligors of a bond, the Court held, for the reasons stated in its —, that the signatures of the obligors were not genuine, and directed the prosecution of A on a charge of forgery. On the trial of A before a jury, the — of the Civil Court was put in evidence on behalf of the prosecution, and its contents commented on by the Sessions Judge in his charge to the jury: *Held* that this — had been illegally admitted. (Cr.) I. L. R. 6 Cal. 247.

See Arbitration 13.
Attachment 7.
Decree 16.
Judgment in Rem.
Pauper Suit or Appeal 7.
Practice (Appeal) 2, 4, 14.
Res Judicata 21.
Special Appeal 3.

Judgment in Rem.

See Judgment 1.
Legitimacy 3.
Res Judicata 13.
Sale (in Execution of Decree) 3.

Julkur.

1. Plaintiffs sued for possession of certain — lands as belonging to their estate. Plaintiffs and defendants were respectively the proprietors of two adjacent estates which originally formed one talook in the occupation of defendant's ancestor, and which talook was severed into two estates at a sale for arrears of revenue. It was found as a fact that defendants were in possession under a Magistrate's order under Act IV of 1840, and that they and their ancestors exercised the — and other rights when the land was covered with water: *Held* that plaintiffs could succeed only by establishing a better title than defendants to the — lands, and by proving that the effect of the revenue-sale was to transfer to them, as part of the talook which belonged to them, any soil which might be recovered from the bheel. (P. C.) 2 P. C. R. 169 (11 W. R. P. C. 1; 2 B. L. R. P. C. 1; 12 Moo. 145). *See also* 11 W. R. 566.

2. Where an auction-purchaser at a revenue-sale brought a suit to obtain possession of certain — as forming part of his zemindaree against defendants whose possession had been confirmed in an Act IV of 1840 case, the burden was held to lie on plaintiff to show that the — in dispute formed part of the assets of the zemindaree at the time of the Permanent Settlement. (P. C.) 2 P. C. R. 865 (20 W. R. 44; 12 B. L. R. 210).

3. Even if the settlement papers of a pergunnah show that all which at the time of the Permanent Settlement had been settled with the then zemindars of the pergunnah was a right of fishery, that might afford an inference that the soil of the *bheel* remained in the Government, or that at all events any land reclaimed therefrom would be subject to a fresh assessment of revenue; but that circumstance would give no title to the proprietor of one part of the pergunnah against the proprietor of another part of it. If what was originally settled was the land covered by the water treated as a mouzah, the title to that land would pass under the term — *Khuluk-Shajai* to whomsoever that portion of the pergunnah might thereafter be transferred. (P. C.) 3 P. C. R. 809.

4. The dismissal, on the ground of want of jurisdiction, by the Civil Court of a suit to eject the defendants from the fishing ground of the plaintiffs, situate below low water mark, does not operate as a bar to a subsequent suit by the plaintiffs to recover damages from the defendants for fixing their fishing stakes and nets too near to those of the plaintiffs. I. L. R. 2 Bom. 19.

5. Rights of the Crown and of the public in the waters and the subjacent soil of the sea, discussed. The right of the public to fish in the sea, whether it and its subjacent soil be or be not vested in the Crown, is common, and is not the subject of property. That right may, in certain portions of the sea, be regulated by local custom. Members of the public, exercising the common right to fish in the sea, are bound to exercise that right in a fair and reasonable manner, and not so as to impede others from doing the same; and conduct which prevents another from a fair exercise of his equal right, if special injury thereby results to him, is actionable. *Ib.* *See* I. L. R. 4 Cal. 53.

6. A private right of fishery in a tidal navigable river must, if it exists at all, be derived from the Crown, and established by very clear evidence, as the presumption is against any such private rights. *Quære* whether such right can be created at all. I. L. R. 4 Cal. 53.

7. A mere recital in quinquennial papers that a person is the owner of — rights in a zemindaree settled with him by Government, is not sufficient to give to such person a right of fishery in a public navigable river; any right granted under such word — would be perfectly satisfied if construed to apply exclusively to a right to fish within enclosed water, such as a jheel. *Ib.*

8. The right of occupancy which accrues to tenants who have occupied or cultivated land for twelve years or upwards, does not arise in respect of the right called — or fishing. That is a right which may be let out by *ijaradars* under the landlord, and may be enjoyed under them so long as their *ijara* continues, but is liable to be determined at the expiration of the *ijara*. I. L. R. 4 Cal. 767.

9. Although the lessee of a — cannot acquire any rights of occupancy, he cannot be ejected by a suit brought by only one of several proprietors. A lease granted by all the proprietors cannot be varied or terminated at the suit of one. I. L. R. 4 Cal. 961.

See Criminal Trespass 1.
Jurisdiction 35.
Limitation (Act IX of 1871) 55.
,, (Act XV of 1877) 43.
Public Spring or Reservoir 1.
Sale (in Execution of Decree) 30.

Jummabundee.

See Evidence (Documentary) 8.

Jungle.

See Churs 21.
Limitation 45.
Partnership 13.

Jurisdiction.

1. A suit by an under-tenant, claiming possession of land from which he has been dispossessed, whether brought against the zemindar or the Government as the auction-purchaser of the zemindaree rights under Reg. XI of 1822, was held properly brought in the Collector's Court under Act X of 1859 s. 23 cl. 6. (P. C.) 2 P. C. R. 306 (13 W. R. P. C. 24; 13 Moo. 317). *See* 20 W. R. 455, 23 W. R. 460.

JURISDICTION (*continued*).

2. Where a case, heard in review before the four Judges of the late Sudder Court at Agra, was left undecided (because the four Judges were equally divided in opinion) when the High Court in the N. W. P. was established, it was held that one of the Judges of the High Court sitting as a single Judge had — under cl. 27 of the Letters Patent to hear and determine the case. (P. C.) 2 P. C. R. 388 (15 W. R. P. C. 16; 13 Moo. 585; 6 B. L. R. 283).

3. A former decision by the Courts in India confirmed by the Privy Council, adjudging the land in dispute to be an accretion to respondent's settled estate in Shahabad, was held to be a bar, under Act VIII of 1859 s. 14, to the — of the Ghazeepore Courts to try the present suit for the same land. (P. C.) 2 P. C. R. 660 (18 W. R. 182; 12 B. L. R. 391).

4. The — of a Principal Sudder Ameen to deal with a decree referred to him for execution by the Zillah Judge under Act V of 1836 does not cease by his striking the case off his file after partial execution. (P. C.) 2 P. C. R. 711 (18 W. R. 319).

5. In a suit against the Secretary of State to recover principal and interest on certain mortgage-bonds executed by the ex-King of Delhi, it was held that Municipal Courts had no — to enforce engagements between Sovereigns founded on treaties. (P. C.) 2 P. C. R. 726 (18 W. R. 389; 12 B. L. R. 167; L. R. I. A. Sup. 119).

6. Consequent on transfer of certain territory in Kattywar belonging to the Thakoor of Bhownuggur from British — to that of the Thakoor. (P. C.) 3 P. C. R. 277 (25 W. R. 261; L. R. 3 I. A. 103; I. L. R. 1 Bom. 367). *See also* I. L. R. 2 All. 1.

7. Where an estate is seized by the Crown by its right of conquest, and not by virtue of any legal title, such seizure must be regarded as an act of State, and is not liable to be questioned in a Municipal Court. (P. C.) L. R. 2 I. A. 38.

8. Consent to the exercise of — cannot be assumed, even if consent would have given — in the case. (P. C.) 3 P. C. R. 371 (L. R. 4 I. A. 66; I. L. R. 2 Cal. 327).

Where a Court has no —, no consent of parties can give it. I. L. R. 5 Cal. 489.

9. Act XXII of 1869 was in its scope within the legislative power of the Governor-General in Council, and so far from being in contravention of the statute 24 and 25 Vic. c. 104, or of the Letters Patent issued thereunder (as altered by the 28 and 29 Vic. c. 15), such an exercise of the said legislative power, as might remove the Garo Hills or any place or territory from the — of the High Court at Calcutta, is expressly contemplated and authorised both by those Statutes and by the Letters Patent themselves. (P. C.) 3 P. C. R. 556 (L. R. 5 I. A. 178; I. L. R. 4 Cal. 172). (Overruling decision of F. B. in I. L. R. 3 Cal. 63).

10. Section 9 of the same Act, which entrusted a discretion to the Lieutenant-Governor of Bengal to extend the Act to the Khasi and Jaintia Hills, was not *ultra vires* of the Indian Legislature; it being conditional legislation, and not a delegation of legislative power. (P. C.) *Ib.* (Overruling decision of F. B. in I. L. R. 3 Cal. 63).

11. The Privy Council suggested the addition in Act VIII of 1859 s. 13 (which authorized the High Court of the district, in which a suit for immoveable property situate in the — of different High Courts is brought, to allow the suit to be proceeded with in the district of another High Court) of an express power to the former High Court to transfer the suit to the other Court in the position in which it then stood; *e.g.*, as in this case, with the finding that plaintiff was a pauper. (P. C.) 3 P. C. R. 627 (L. R. 6 I. A. 126; I. L. R. 2 All. 241).

12. In a suit for accounts against the manager of a family estate consisting of landed property in several places, at each of which a house was maintained at the expense of the estate, when not only no particular place for rendering the accounts had been fixed either by contract or practice, but the accounts had been rendered and examined at different times in different places: *Held* that the defendant's occasional residence, for periods of time more or less considerable, at one of such places, constituted a dwelling within the meaning of Act VIII of 1859 s. 5. (P. C.) 3 P. C. R. 788 (L. R. 7 I. A. 196).

13. In a suit brought against the owners of a mine adjacent to a mine belonging to the plaintiffs, the plaint alleged that a certain boundary line existed between the two mines, and prayed for a declaration that the boundary line was as alleged, and that the defendants might be restrained by injunction from working their mine within a certain distance from such boundary line. The defendants in their written statement disputed the plaintiff's allegation as to the course of the boundary line. The mines were situated out of the — of the High Court, but both the plaintiffs and defendants were personally subject to the —. *Held* that the suit was a suit for land within cl. 12 of the Letters Patent, and therefore one which, the land being in the Mofussil, the Court had no — to try. (O. J.) I. L. R. 1 Cal. 95.

14. Where a tenant obtains a decree directing the withdrawal of a distraint under Act VIII of 1869 (Bengal) s. 95, and the landlord, by refusing to deliver up the full amount of the distrained property, is guilty of refusing to withdraw the distraint within the meaning of s. 98, the tenant's remedy is a suit in the Moonsiff's Court under that Section; the Small Cause Court has no — in the matter. I. L. R. 1 Cal. 183 (24 W. R. 222).

15. Where one of two co-sharers in certain lands, acting under a power of attorney, had conveyed the property of the other to a creditor, under a trust for the conversion of all the said property including the above-mentioned lands into money, for the satisfaction of the debts due by the other co-sharer, and the latter denied the right of the former to make such a disposition of his property under the power of attorney: *Held* that the suit was essentially a "suit for land" in the Mofussil, which the High Court on its Original Side had no — to try. (O. J. Ap.) I. L. R. 1 Cal. 249 (25 W. R. 272). *See* I. L. R. 4 Bom. 482; (O. J. Ap.) I. L. R. 6 Cal. 328.

16. Where an Assistant Commissioner in a Non-Regulation district, vested with first-class powers as a Magistrate and with summary — (under Act X of 1872 s. 222) in one place, had gone on furlough, and on his return been posted to another place and there vested with the former only: *Held* that the second appointment was not a "transfer" under s. 56, and that the officer did not possess summary powers in his second charge. (Cr.) 25 W. R. Cr. 52 (I. L. R. 2 Cal. 117).

17. Where a *hoondee* had been drawn out of the —, upon a person within the —, indorsed and delivered, out of the —, to one who, out of the —, indorsed the same and sent it to a person who, within the —, received it, got it accepted, and presented it for payment to the drawee by whom it was dishonored within the —: *Held* that the dishonor of the *hoondee* by the drawee within the — was a material part of the cause of action by the holder against the first indorser, and consequently that such material part of the cause of action having arisen within the —, and the holder having obtained leave to bring his suit under cl. 12 of the Letters Patent, 1865, the High Court had — to entertain the suit. (O. J. Ap.) I. L. R. 1 Bom. 23.

18. Where dacoity was committed at Velanpor, a village in the Gaikwar's territory, and a part of the stolen property found where it had been concealed by the accused in British territory: *Held* that the conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpor, although, had Velanpor been in British territory, the subsequent acts in the process of taking away the property might in the legal sense have coalesced with the first and principal one, so as to give — under Act X of 1872 s. 67 in each district into which the property was conveyed. But on the conviction of retaining stolen property, the sentences awarded could, it was held, be sustained, the retaining having taken place in British territory. (Cr.) I. L. R. 1 Bom. 50. *See also* 22 *post.*

Where also a Nepaulese subject, having stolen cattle in Nepaul, brought them into British territory where he was arrested, and sentenced to one year's rigorous imprisonment: *Held* that he could not be tried for the theft itself, but that he might be convicted of dishonestly retaining the stolen property. I. L. R. 6 Cal. 307.

19. The defendant, who was Collector of Sea Customs at Madras, professing to act under Act VI of 1863 s. 24, imposed a fine on the plaintiff over whom he had no —, and seized the property of the plaintiff with a view to realising such fine: *Held*, on a consideration of the circumstances of the case, that the belief of the defendant that he had — was not *bonâ fide*, and that accordingly he was not protected by Act XVIII of 1850. (F. B.) I. L. R. 1 Mad. 89.

JURISDICTION (*continued*).

20. The High Court has — to try original suits against Revenue Officers for acts *ultra vires* done in their official capacity. The provision of the Letters Patent of the late Supreme Court, whereby such suits were excluded from the — of the Supreme Court, has not been continued by the Letters Patent of the High Court so as to except such suits from the Original — of the High Court, but has been impliedly repealed by those Letters Patent. (F. B.) *Ib.*

21. The District Court of Chingleput continued, down to the year 1876, to have —, under Reg. IX of 1803 (Madras) s. 55, in suits against Customs Officers. (F. B.) *Ib.*

22. The accused stole property in foreign territory, and was apprehended with it in his possession in a district in British territory: *Held* that Act X of 1872 s. 67 did not give the Courts of such district — to try him for the theft. (Cr.) I. L. R. 1 Mad. 171. *See also* 18 *ante.*

23. A, a Hindoo British subject, neither domiciled, resident, nor possessing property in the foreign State of Pundukotta, casually resorted thither and there drew a bill for a sum found due to his creditor B resident in that State. B sued A on this bill in the Civil Court of Pundukotta, and got a decree in his favor. B then sued A in the Civil Court of Madura for enforcement of this decree. A pleaded that the Pundukotta Court had no — to pass the decree sued on, and that he had no notice of the suit. It was found on regular appeal that A had no notice and decided that the Pundukotta Court had —. *Held* on special appeal that the Civil Court of Pundukotta had no — to try the suit; that the mere making of a contract within the — of a foreign Court does not necessarily render that Court competent to adjudicate upon all the obligatory relations which flow directly or indirectly from it. I. L. R. 1 Mad. 196.

24. The repeal of Act III of 1865 (Madras) by Act XVI of 1874 has not deprived Magistrates in the Madras Presidency of — over offences created by special and local laws thereby given to them. (Cr.) I. L. R. 1 Mad. 223.

25. Plaintiffs contracted at Cawnpore with the E. I. Ry. Co. to deliver goods in Madras. The E. I. Ry. Co. does not run into the — of the Madras High Court. The Ry. Co. made default in delivery of the goods, and the plaintiffs sued them in the Madras High Court for damages for the breach of contract. No leave to sue (under cl. 12 of the Letters Patent) was obtained. The Court of first instance dismissed the suit for want of —: *Held* on appeal that the breach of contract having taken place at Madras, the cause of action had wholly arisen within the — of the High Court. (O. J.) I. L. R. 1 Mad. 375.

26. The Civil Court is not prohibited by Act XIX of 1873 s. 241 from entertaining a suit by a putteedar, who has paid a sum on account of a demand for Government revenue, to recover from his co-putteedars the balance in excess of his own quota. (F. B.) I. L. R. 1 All. 26.

27. The fixed and permanent home of a man's wife and family, and to which he has always the intention of returning, will constitute his dwelling place within the meaning of Act VIII of 1859 s. 5 and Act XXIII of 1861 s. 4. I. L. R. 1 All. 51.

28. A suit for the money equivalent of arrears of rent payable in kind is a suit for arrears of rent within the meaning of Act XVIII of 1873 s. 93, and therefore cognizable by a Revenue Court. (F. B.) I. L. R. 1 All. 217.

29. A Revenue Court is competent, in a suit for profits under Act XVIII of 1873 s. 93 cl. (*h*) to award the interest claimed on such profits. I. L. R. 1 All. 261.

30. Under Act XVIII of 1850 s. 1, no person acting judicially is liable for an act done or ordered to be done by him in the discharge of his judicial duty within the limits of his —. In such cases, the question whether he acted in good faith does not arise. I. L. R. 1 All. 280.

31. A granted B a lease of his zemindaree rights in certain villages for a term of years at a fixed rent. Two years before the term expired, in breach of the conditions of the lease, he dispossessed B and thereafter made collections of rent from the agricultural tenants himself. B sued him in the Civil Court to recover the moneys so collected by him in those two years: *Held* that the Revenue Courts were open to B, and that, as he could obtain in such a Court the relief he sought in the suit by an application for compensation for wrongful dispossession, the Civil Courts could not, under Act XVIII of 1873 s. 95 cl (*m*), take cognizance of the suit. (F. B.) I. L. R. 1 All. 338.

32. Notwithstanding that zemindaree cesses cannot be collected until recognised and sanctioned by the Settlement authorities, there is nothing in Reg. VII of 1822 or Act XIX of 1873 to preclude a Civil Court from taking cognizance of suits seeking a declaration of zemindaree rights to such cesses. I. L. R. 1 All. 373. *See* I. L. R. 2 All. 49.

33. In a suit for redemption of lands lying within the district of Mirzapore, but included in the same mortgage with other lands lying within the domains of the Maharajah of Benares, the Subordinate Judge of Mirzapore took an account of the sums realized by the mortgagor from all the lands mortgaged, and finding that these sums were sufficient to discharge the entire mortgage debt, gave the plaintiff the decree sought; the Lower Appellate Court dismissed the suit on the ground that such account could not be taken without deciding questions lying *ultra vires* of the Mirzapore Court: *Held* that the Mirzapore Court might, under Act VIII of 1859 s. 5, take such account for the purpose of deciding whether the entire mortgage had been satisfied, and might give plaintiff a decree for redemption of the property lying within the local limits of its —, notwithstanding that, in doing so, it would have incidentally to determine questions relating to lands lying within the domains of the Maharajah. I. L. R. 1 All. 431.

34. A suit to eject from land, as a trespasser, a person who has entered upon such land asserting his claim to the status of an ex-proprietary tenant, and to recover from him mesne profits, is a suit cognisable by the Civil Court. I. L. R. 1 All. 448.

35. The District Court may, when the defendants reside within its local — try a suit for damages for, and restrain by injunction, an alleged illegal disturbance of the plaintiff's right to fish and use fishing stakes and nets fixed in the sea below low-water mark and within 3 miles of it. I. L. R. 2 Bom. 19.

36. The High Court has no — to entertain appeals in Civil suits tried in the Southal Pergunnahs. I. L. R. 3 Cal. 298.

37. Under Act X of 1877 s. 19, it is not necessary to obtain the leave of the Court under cl. 12 of the charter to sue in respect of immoveable property situate partly within and partly without the ordinary original civil — of the High Court. (O. J.) I. L. R. 3 Cal. 370.

38. The Civil Courts are not competent under Act XIX of 1873 s. 241 to try suits to alter or amend a record-of-rights, or to give directions in respect of the same; but they are not debarred from entertaining and determining questions of right merely because such questions may have been the subject of entries in the record-of-rights, and because such determination may show that such entries are wrong and need correction. Consequently, a claim in the Civil Court for a declaration of the right to make certain collections of rent and to defray therewith certain village expenses, though such right had been the subject of an entry in the record-of-rights adverse to the person claiming such right, was held to be maintainable. I. L. R. 1 All. 613.

39. In a suit for arrears of rent, the plaintiff claimed under a *putnee* granted by the owner of the land after a certificate had been issued against him out of a Collector's office under Act VII of 1868 (Bengal). The defendant had purchased the land in question at a sale held under the Act. The plaintiff alleged that the certificate had not been served, and that no notice before the certificate was issued was served upon the grantor as required by s. 18 of the Act; and he contended that as the Collector's proceedings were irregular, the *putnee* was valid. The District Judge held that the Civil Court had no — to enquire into the Collector's proceedings, and must, as nothing appeared to the contrary, assume that they were regular: *Held* that the Judge was bound to examine the proceedings of the Collector to see that they were legal and regular so as to constitute a legal bar to the grant of the *putnee*, and that the Judge was not at liberty to make any presumption in favor of their legality or correctness. I. L. R. 3 Cal. 771.

40. Under Act VIII of 1859 s. 12, the High Court has power to sanction the trial of a suit for land situated in the Southal Pergunnahs, in which the value of the subject matter exceeds Rs. 1,000, in the Civil Court competent to try it. I. L. R. 4 Cal. 222.

41. In districts where Act X of 1859 is still in force, the — of the Civil Courts cannot be ousted, except in cases

JURISDICTION (*continued*).

where the parties concerned and the matters in dispute come wholly and exclusively within the category of persons and subjects in respect of which express — is given to the Revenue Courts. Where, therefore, a suit which contained some items of charges cognizable by the Civil Court was instituted in such Court: *Held* that such suit was properly so brought. I. L. R. 4 Cal. 547.

42. The Special Court of British Burmah has power to entertain an appeal from a sentence of death or other sentence passed by the Judicial Commissioner, in a case transferred by him to his own Court from that of the Sessions Judge under the powers conferred by Act X of 1872 s. 64, and Act XVII of 1875 (Burmah Courts Act) s. 35, the hearing subsequent to the transfer being an exercise of original — on the part of the Judicial Commissioner. (Cr.) I. L. R. 4 Cal. 667.

43. T, the occupancy-tenant of certain lands, gave K a lease of his occupancy-rights for a term of 20 years. In the execution of a decree for the ejectment of T from such lands obtained by the landholder against T in a suit to which K was no party, K was ejected from such lands. This decree was subsequently set aside, and T recovered the occupancy of such lands. In a suit against T and the landholder, K claimed the occupancy of the lands and mesne profits for the period during his dispossession, in virtue of the lease: *Held* that the suit was one cognisable in the Civil Courts and not one on the subject-matter of which an application of the nature mentioned in Act XVIII of 1873 s. 95 could have been made, so as to give the Revenue Courts exclusive — in such matter. I. L. R. 2 All. 137. *See also* I. L. R. 2 All. 707. *But see* (F. B.) I. L. R. 2 All. 200 (in which the Full Bench were equally divided in opinion).

44. A native Indian subject of Her Majesty, being a Sepoy in the Indian army, who committed a murder in Cyprus while on service, and who was accused of such offence at Agra, may, under Act XI of 1872 s. 9, be dealt with in respect of such offence by the Criminal Courts at Agra, Cyprus being a "Native State," in reference to Native Indian subjects of Her Majesty within the meaning of that Act. (F. B.) I. L. R. 2 All. 219.

45. The power of the Governor-General of India in Council to make laws for the trial and punishment in British India of offences committed by British Indian subjects in British territories other than British India, discussed. (F. B.) *Ib.*

46. A Division Court of the High Court ordered the Magistrate who had refused to enquire into a charge of murder on the ground that he had no — to enquire into such charge, considering that the Magistrate had — to make such enquiry. The Magistrate enquired into the charge and committed the accused for trial. The Court of Session convicted the accused and sentenced him to death. The proceedings of the Court of Session having been referred to the High Court for confirmation of the sentence, the case came before the Full Court: *Held* that, in determining whether such sentence should be confirmed, the Full Court was not precluded by the order of the Division Court from considering whether the accused had been convicted by a Court of competent —. (F. B.) *Ib.*

47. In consideration of the loan of Rs. 4,000, the defendant agreed to execute a mortgage of certain land beyond the — of the High Court to the plaintiff, and agreed to produce his title-deeds, and to make a good title. In the agreement the plaintiff was described as "of Durmahatta in the town of Calcutta, merchant," and the defendant as "of Panchthopy in Zillah Beerbhoom, at present of Coomertooly in Calcutta." In a suit for specific performance of the agreement to execute the mortgage and in the alternative for the return of the Rs. 4,000: *Held* that so far as the suit was a suit for specific performance, the Court had no —; and further that, as the plaintiff was described as of Calcutta, the defendant would be entitled to redeem by paying the mortgage-money in Calcutta, and that a money-decree could be made. (O. J.) I. L. R. 5 Cal. 82.

48. The Mutiny Act (41 Vic. c. 10) s. 101 does not deprive the Civil (as opposed to Military) Courts of — over British soldiers committing offences within the territorial limits of those Courts, nor render the exercise of their — dependent upon the sanction of the Commander-in-Chief. The section is merely permissive of a military trial being held. (Cr.) I. L. R. 5 Cal. 124.

49. The mere fact that a suit has been over-valued, does not deprive the Court in which it is brought of —, if the over-valuation was *bonâ fide* and had not the effect of altering the appellate —, *i.e.*, did not cause the appeal from the judgment of the Court of first instance to lie to a different Court from that to which it would have lain, had the suit been instituted in a Court having a more limited —. I. L. R. 5 Cal. 188.

50. Plaintiffs in this suit claimed a declaration of their proprietary right in respect of certain lands and possession of the lands, alleging that defendants were their tenants, and liable to pay rent for the lands. Defendants, while admitting the proprietary right of plaintiffs, alleged that they paid the revenue assessed on the lands, that they paid no rent, and that plaintiffs were not entitled to rent, and they styled themselves tenants at fixed rates: *Held* that, as defendants substantially denied the proprietary title of plaintiffs, and set up a title of their own, the claim of plaintiffs for a declaration of their proprietary right and of their right to demand rent was a matter which the Civil Court must decide, leaving plaintiffs to sue in the Revenue Court to eject defendants and to recover rent, if the position of defendants as tenants were established. I. L. R. 2 All. 429.

51. The valuation of a suit for the purposes of stamp-duty, and the valuation of the subject-matter of the suit for the purpose of determining the — of the Court in appeal, are two different things. The value of the suit for the purposes of stamp-duty is fixed by certain rules which determine an artificial value for those purposes. The value of the subject-matter of a suit on appeal on which depends the — of the several grades of civil suits, is the actual value of the property in litigation. I. L. R. 5 Cal. 489. *See also* I. L. R. 4 Bom. 515.

52. A suit for money charged on immoveable property in which the money does not exceed Rs. 1,000, although the value of the immoveable property exceeds that sum, is cognizable by a Moonsiff, such property being situate within the local limits of his —. I. L. R. 2 All. 698.

53. The plaintiffs in this suit, zemindars of a certain village, sued for the possession of certain land in such village, alleging that it had been assigned to a predecessor of the defendant to hold so long as he and his successors continued to perform the duties of village-watchman, and the defendant had ceased to perform those duties, and was holding as a trespasser. The defendant set up as a defence to the suit that he and his predecessors had held the land rent-free for two hundred years, and that he held it as a proprietor: *Held* that such assignment was not a grant within the meaning of Reg. XIX of 1793, and the plaintiffs' claim was not one to resume such a grant or to assess rent on the land, of which a revenue Court could take cognizance under Act XVIII of 1873 ss. 30 and 95 (*c*) or Act XIX of 1873 ss. 79 and 241 (*h*), but one which was cognizable by the Civil Courts. I. L. R. 2 All. 732.

54. The plaintiff sued the defendant for partition of family property, which consisted of moveable and immoveable property. The moveable property was within the —, but all the immoveable property was outside the — of the Court: *Held* that the case did not fall within the provisions of cl. 12 of the Letters Patent, 1865, and that the Court had no — to hear the suit. The fact that his suit included a claim for moveables, which were within the —, did not entitle the plaintiff to sue in the High Court, nor could he obtain leave for that purpose under cl. 12 of the Letters Patent. (O. J.) I. L. R. 4 Bom. 482.

55. The words "all other cases" in cl. 12 of the Letters Patent, 1865, do not include cases of suits for immoveable *plus* moveable property. They refer to cases in which immoveable property is not involved. (O. J.) *Ib.*

56. Leave to sue under cl. 12 of the Letters Patent, 1865, cannot be implied from the fact that leave to sue as a pauper has been granted to a plaintiff. Leave for the former purpose must be distinctly sought and obtained. (O. J.) *Ib.*

57. Certain immoveable property was, on 15th February 1879, notified for sale under a decree of a Civil Court on 15th March following, so that only 29, instead of 30, days elapsed between the day of sale and the notification. The sale having taken place, the execution-debtor applied to the Deputy Commissioner to set it aside upon the ground that the sale was illegal, the requirements of Act X of 1877 s. 290 being essential to its validity. Upon that ground the sale

JURISDICTION (*continued*).

was set aside as illegal by the Deputy Commissioner. On appeal, the Judicial Commissioner reversed this decision, on the ground that the fact of the sale having taken place 29 instead of 30 days after the notification was merely an irregularity, and that, as the execution-debtor had not shown that he had suffered any damage from the irregularity, the sale ought to be confirmed. An application was then made to a Division Bench of the High Court to set aside the Order of the Judicial Commissioner confirming the sale, upon the ground that it was manifestly erroneous, and the Division Bench referred the question to a Full Bench: Whether, assuming the requirements of s. 290 to be essential to the validity of a sale, the High Court had any power, either under 24 and 25 Vic. c. 105 s. 15 or Act X of 1877 s. 622, as amended, to set aside the Judicial Commissioner's order: *Held* by the Full Bench, without answering the question referred, that, assuming the requirements of s. 290 to be essential, the High Court had a right, under its summary powers, to set aside the sale itself, notwithstanding (and apart from the question whether it would set aside) the order of the Judicial Commissioner. (F. B.) I. L. R. 5 Cal. 878.

58. Act VIII of 1859 s. 6 (corresponding with Act X of 1877 s. 15) which provides that "every suit shall be instituted in the Court of the lowest grade competent to try it," does not affect the — of a Subordinate Judge to try a suit wherein several causes of action are joined, the cumulative value of which is over Rs. 1,000; notwithstanding that, if separate suits had been brought on these several causes, such suits must have been instituted in the Court of the Moonsiff. I. L. R. 6 Cal. 6.

See Arbitration 8, 21.
Arrest 1.
Bailment 1.
Contempt of Court 7.
Contract 5, 7, 8, 10*a*.
Co-Sharers.
Cotton Frauds (Bombay) 2.
Court Fees 7.
Criminal Proceedings 7.
Custom 18.
Deccan Agriculturists Relief 2, 3, 4, 7, 9.
Declaratory Decree 12.
Deshmukhs 1.
Endowment 32.
Estoppel 8.
Execution of Decree 5, 9, 17, 29, 33.
Extradition 1.
Guardian and Minor 36.
Hereditary Office 1, 2.
High Court 2, 8, 11, 15, 38, 39.
Hoondee 5.
Insolvency 8, 15.
Instalments 6.
Interest 1.
Joint Stock Company 9.
Julkur 5.
Lakheraj 2.
Landlord and Tenant 5.
Limitation (Act XIV of 1859) 9, 17.
,, (Act IX of 1871) 104.
,, (Act XV of 1877) 32.
Lumbardar 2.
Magistrate 5.
Mamlutdar 1, 2, 3, 4.
Marine 4.
Mortgage 73, 74, 96, 120.
Municipal 1, 3, 11, 12.
Nuisance 2.
Obstruction 1, 2.
See Partition 12.
Partnership 13.
Plaint 5.
Practice (Appeal) 5, 6, 20, 28.
,, (Commissions) 2.
,, (Review) 6.
Privy Council 23, 29, 38, 43.
Registration 2, 5.
Res Judicata 3, 19, 26, 29, 33, 34.
Sale (in Execution of Decree) 23, 25, 51.
Service 3, 4.
Sheriff 1, 2.
Small Cause Court 1, 2, 6, 8, 9, 11, 12, 13, 14, 17, 18, 19, 21, 22, 23, 27, 29, 30, 31, 32, 34.
Special Appeal 1, 4.
Stamp Duty 16.
Toda Giras Huk 6, 10.
Under-Tenure 1.
Unlawful Assembly 1.
Value of Suit or Appeal 1, 2, 3.
Will 48.
Zanzibar 1, 3.

Jury.

1. Act X of 1872 s. 263 casts upon the High Court the duty both of Judge and —; but notwithstanding this difference, which clothes it with greater powers and responsibilities than the superior Courts in England, it will, as far as may be, be guided by the principle of English law that the verdict of a — will not be set aside unless it be perverse and patently wrong, or may have been induced by an error of the Judge. In a proper case, however, the High Court will rectify the verdict of a —. (Cr.) I. L. R. 1 Bom. 10.

2. A prisoner not being a European British subject, who is not charged jointly with a European British subject, is not entitled, under the provisions of Act X of 1875 ss. 32 to 37, to be tried by a — of which at least five persons shall not be Europeans or Americans. (O. J. Cr. F. B.) I. L. R. 1 Bom. 232.

3. Act X of 1875 s. 33 contemplates that the names of the — to be "chosen by lot" shall all be drawn out of one box containing the names of all persons summoned to act as jurors. (O. J. Cr.) I. L. R. 1 Bom. 462.

4. Where the — acquitted the prisoners on the charges framed, but found certain facts which amounted to another offence, and omitted to convict the prisoners of that offence, as provided by Act X of 1872 s. 457: *Held* that the High Court could, on the case coming before them under s. 263, find the prisoners guilty of such offence. (Cr.) I. L. R. 3 Cal. 189.

5. Where a — are not unanimous in their finding, and the Judge dissents from the opinions expressed by them, on the case being referred under Act X of 1872 s. 263, the High Court is competent to find the prisoner guilty notwithstanding an acquittal by the majority of the —. (Cr.) I. L. R. 3 Cal. 623.

6. It is the duty of a Judge, in sending up a case to the High Court under ss. 263 and 464, when he disagrees with a verdict of acquittal, to state the offence which, in his opinion, has been committed. (Cr.) *Ib.*

7. The "dissent" referred in Act X of 1872 s. 263 cl. 4 must be such a complete dissent as to lead the Judge to consider it necessary for the ends of justice to submit the case to the High Court. (Cr.) I. L. R. 2 Bom. 525.

8. The trial by a — of an offence triable with Assessors is not invalid on that ground; but an accused who would have been entitled to an appeal on the facts, if the case had been tried with assessors, is not debarred from that right merely by the fact that the trial by — is not invalid. (Cr.) I. L. R. 3 Cal. 765.

9. In charging the — upon the trial of a prisoner for being dishonestly in the possession of stolen goods, the Judge directed the — to consider the proof of previous convictions for theft as evidence from which inference might

JURY (*continued*).

fairly be drawn as to the character of the accused : *Held* that this amounted to a misdirection ; for though Act I of 1872 s. 54 declares that "the fact that the accused person has been previously convicted of an offence is relevant," yet the same section also declares that "the fact that he has a bad character is irrelevant," and that the evidence was irrelevant and inadmissible. (Cr.) I. L. R. 5 Cal. 768.

10. The accused were charged under s. 149, coupled with s. 325, of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The — disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt under s. 325 : *Held* that such verdict was, under Act X of 1872 s. 457, legally sustainable, although that offence did not form the subject of a separate charge. S. 457 enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor offence. (Cr.) I. L. R. 5 Cal. 871.

11. It is only in a case where the — are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge unless contrary to law. (Cr.) *Ib.*

12. Where a Judge dissents from the unanimous finding of a — given in accordance with the law, the only procedure open to him to follow is that laid down in Act X of 1872 s. 263 cl. 5. (Cr.) *Ib.*

See Causing Death by Rash or Negligent Act 3.
Evidence (Corroborative) 5.
Judgment 3.
Obstruction 6, 8.

Jus Tertii.

See Grant 7.
Insolvency 8.
Mortgage 44.
Possession 9.

Kanam Mortgage.

See Mortgage 84.

Kanara.

1. Land tenure in — ; land revenue ; nature of *kumri* cultivation; kumri assessment ; rights of *vargdars ; karlaya* (tax on bill-hooks). I. L. R. 3 Bom. 452.

Karanavan.

1. Where a — was found to have made perpetual grants of certain lands belonging to his *tarwad* for other than family purposes, and to have made demises of certain other lands belonging to his *tarwad* for unusual purposes on no justifiable ground : *Held* that this did not constitute sufficient ground for removal of the — from his office, his conduct not having been such as to show that he could not be retained in his position without serious risk to the interests of the family. I. L. R. 1 Mad. 153.

2. The position of a — is not analogous to that of a mere trustee, officer of a corporation, or the like. The person to whom the — bears the nearest resemblance is the father of a Hindoo family. He could not be removed from his situation except on the most cogent grounds. *Ib.*

3. The solution of the difficulties which the state of families and property in Malabar will always create will not be assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the natural authority of the —. *Ib.*

4. A — who appoints a junior *anandravan* as his agent to manage part of the *tarwad* property, collect rents, etc., can, on behalf of the *tarwad* family, revoke this authority at any time and take the management into his own hands. I. L. R. 1 Mad. 351.

5. In a suit to obtain a declaration that the lands mentioned in the plaint formed the common property of the *tarwad* of which the plaintiff was —, and to have the revenue register of those lands transferred to the plaintiff's name, the plaint alleged that the lands in question were the private acquisitions of three of the deceased members of the *tarwad*, of whom the last, in whose name the lands were last assessed, on becoming — of the *tarwad*, applied to the Sub-Collector to have the registry of those lands transferred to the names of his own nephews, the first and second defendants; that plaintiff protested and was referred to a Civil suit to obtain a declaration that the registry could not be so transferred : *Held* on special appeal that the plaintiff was entitled to the declaration sued for, as it would enable him to go to the Collector for substantial relief in the shape of the transfer of registry to his name, but that the relief sought for could not be granted as the Revenue authority was not a party to the suit. I. L. R. 1 Mad. 381.

Khal.

See Right to Water 1.
Watercourse 3.

Khas Mehal.

1. At the time when a zemindaree came under the khas management of a Settlement Officer, arrears of rent were due by the plaintiff to the zemindar. The Settlement Officer issued a certificate against the plaintiff under Act VII of 1868 (Bengal) s. 19, requiring him to pay these arrears. The plaintiff at first objected, but subsequently withdrew his objection and paid a portion of the money into Court, and presented a petition stating that the amount paid in was partly due to the Government, and asking that his property might be released from attachment. On payment of the balance claimed under the certificate and costs, the certificate was discharged : *Held* that a suit to recover the amount paid to Government, brought on the ground that that amount was really payable to the zemindar, would not lie. *Quære* whether such a suit would lie if the plaintiff were compelled to pay again to the zemindar. I. L. R. 5 Cal. 325.

See Evidence (Documentary) 11.

Khasi Hills.

See Jurisdiction 10.

Khazanchee.

See Information 1.

Khoja.

See Mahomedan Law 10, 11, 12.

Khot.

See Enhancement 21.
Kubooleutdar Khot.
Landlord and Tenant 5, 6.
Timber 3.

Kidnapping.

1. A child under ten years of age is, *primâ facie*, subject to guardianship, and any one removing such child without permission properly obtained, takes the risk of such act upon himself; the fact of having omitted to enquire whether the child had a guardian or not, is no defence to a charge of — a minor from lawful guardianship under s. 361 Penal Code. (Cr.) I. L. R. 3 Bom. 178.

See Abetment 2.

Kistbundee.

See Instalments.

Kota.

See Practice (Parties) 8.

Krishnarpan.

See Lakheraj 8.

Kshatrya.

See Hindoo Law (Adoption) 41.
Illegitimate 4.

Kubala.

See Deed of Sale.

Kubooleut.

1. In order to entitle a landlord to sue a tenant for a — at a certain rate of rent, he should either have tendered a pottah to the tenant at the rate of rent mentioned in the —, or he should be willing to grant a pottah at that rate; and if the Court considers that the rent which he claims is the correct amount, it will presume that he is ready to grant a pottah at that rate, and will give him a decree for the —. But this presumption will not hold if the Court thinks that the rate claimed is too high; and in such a case, therefore, the presumption having failed, the landlord will not be entitled to a — at such lower rate as the Court may think just, but his suit will be dismissed. I. L. R. 3 Cal. 498.

2. Mulgeni kubooleut. *See* Enhancement 26.

3. If a plaintiff brings a suit for a — at an enhanced rate against a tenant holding a mouzah under him at a wholly insufficient rent, and the tenant sets up a wholly false and fraudulent defence, *e.g.* that the rent he pays is not liable to enhancement as he holds under a pottah which entitles him to hold so long as he pays a certain fixed rent quite irrespective of the value of his holding; though on enquiry it is found that the defendant's plea is entirely false, and that he is not entitled to hold at any fixed rent, but only on payment of a fair rent with reference to the value of his holding, yet if it be found that the plaintiff has at all over-estimated the amount of rent to which he is entitled, his suit must be dismissed with costs. I. L. R. 4 Cal. 963.

See Arbitration 25, 26.
Co-Sharers 6.
Kubooleutdar Khot.
Lease 2.
Mokurruree 5.
Mortgage 102.
Watercourse 3.

Kubooleutdar Khot.

1. When the person who is the "occupant" of certain lands within the meaning of Act I of 1865 (Bombay) s. 2 cl. 1, fails to pay the revenue due thereon, the — may recover the amount from that person's mortgagee in possession. I. L. R. 1 Bom. 70.

Kulkarni.

See Hindoo Law (Adoption) 30.

Kutkinadar.

See Sale (in Execution of Decree) 36.

Laborer.

See Contract (for Work or Labor) 1.

Laches.

See Building 1.
Churs 7.
Deed 2.
Limitation (Act IX of 1871) 14.
Mesne Profits 3.
Mortgage 20.
Privy Council 34.
Right to Light and Air 6.

Lakheraj.

1. Plaintiff in a suit to establish her — right to — land, stated in her plaint that she was in possession of certain land by virtue of the will of her husband; that while in possession of the land a suit was brought against her in the Small Cause Court for rent by the defendants, who obtained a decree; and that, there being no appeal against the decision, the — rights in respect of the lands were consequently injured; she therefore brought the present suit: *Held* that such a suit was not maintainable, as the claim which the defendants set up was no longer in the condition of a mere assertion or a claim for right, but had passed into a decree; and that the plaintiff was not without a remedy, for if a further suit for rent be brought, she might file a suit and apply for an injunction to prevent the other party from proceeding so long as her suit was not disposed of and an absolute relief given her. I. L. R. 3 Cal. 612.

2. *Semble*, the plaintiff might, if a fresh suit for rent be brought, again raise the question of her — title, because the Small Cause Court has no power to determine finally a question of right. *Ib.*

3. Plaintiff claimed the possession of certain land in virtue of a grant to him, not merely of the proprietary right in such land, but of the rents of the same undiminished by the payment of the revenue assessed thereon which the grantor took upon himself to pay. *Held* that the grant was null and void and liable to resumption, with reference to Reg. XIX of 1873 s. 10, Reg. XLI of 1795 s. 10, Act XVIII of 1873 s. 30, and Act XIX of 1873 s. 79; and that the suit was cognizable by the Civil Courts. (F. B.) I. L. R. 2 All. 515.

4. In a suit instituted in 1877, A prayed for a declaration that he had a — title to certain lands; the defendant stated that the lands for a declaration of a title to which A now sued formed part of certain lands which had been the subject of resumption-proceedings, which were terminated in 1863 by a decree declaring that the lands which were the subject of that suit, including the lands now claimed by A, were not —. It being found as a fact, that A had neither been a party to, nor been represented in the resumption proceedings, that he had been in quiet and undisturbed possession of the lands which he now claimed for more than twelve years before the institution of his suit, and that proceedings had been taken by the defendant calculated to disturb such possession: *Held* that A was entitled under Act I of 1877 s. 42 to the declaration prayed for; that although the *onus* of proof lay on the plaintiff, it was not necessary for him to prove that the lands claimed by him, to be held as —, had been held rent free from before the date of the Permanent Settlement; but that it was sufficient for him to prove that the defendant was, at the time of the institution of the suit, debarred by lapse of time from instituting a suit for the resumption or assessment of rent upon the land. I. L. R. 5 Cal. 949.

See Attachment 11.
Hereditary Right 2.
Jurisdiction 58.
Landlord and Tenant 7.
Limitation (Reg. II of 1805) 1.
Onus Probandi 1, 3, 4.
Pension 2.
Vendor and Purchaser 8.

Land.

1. Seer land. *See* Lumbardar 4; Mortgage 55, 56, 58.
2. Excess land. *See* Enhancement 20.

See Building 1, 2, 3.
Decree 18.
Husband and Wife 16.
Immoveable Property.
Jurisdiction 40.
Krishnarpan.
Lakheraj.
Land Dispute.
Landlord and Tenant.
Land taken for Public Purposes.
Mischief 2.
Reclaimed Land.
Reimbursement 1.
Res Judicata 15.
Sale 9.
Small Cause Court 22.
Special Appeal 6.
Title Deeds 1.
Trespasser 1.

Land Dispute.

1. A Mamlutdar's order under Act V of 1864 (Bombay) is not conclusive evidence of the facts of possession and dispossession between the parties. S. 1 of that Act gives to Mamlutdars' Courts jurisdiction in case of dispossession within six months from the date of such dispossession, and relates to immediate possession; and under s. 15 the party to whom such immediate possession is given by the Mamlutdar, or whose possession he shall maintain, shall continue in possession until ejected by a decree of a Civil Court. I. L. R. 1 Bom. 624.

2. The power reserved to the Revenue Courts by Act XVI of 1838 s. 1 cl. 2, to determine the facts of possession and dispossession, was so reserved merely for the temporary purpose of enabling those Courts to dispose of the immediate possession, which was to continue until the Civil Court ejected the party put into such immediate possession. The purpose of the above Act, as that of Act V of 1864 (Bombay), was temporary only and chiefly to provide for the cultivation of the land and to prevent breaches of the peace till the Civil Court should determine the rights of the disputants. The decisions of the Revenue and the Mamlutdars' Courts as to possession and dispossession do not bind the Civil Courts; the proceedings in the former Courts being of a summary character. The Civil Courts alone can determine the question of title. *Ib.*

3. In a — between two rival zemindars, constructive possession through intermediate holders (ticcadars) to whom the ryots pay rents, is not such possession as is contemplated by Act X of 1872 s. 530. (Cr.) I. L. R. 3 Cal. 320.

4. Nor does that section apply to a dispute arising out of one joint owner of a parcel of land erecting on it an edifice without the consent of another joint owner. (Cr.) I. L. R. 3 Cal. 573.

5. Ouster by one person of another lawfully in possession of property confers no rights on the former which can be recognized in proceedings taken under Act X of 1872 s. 530. The Court should refer back to a time previous to the quarrel when such possession was peacefully enjoyed by one or other of the disputants. I. L. R. 4 Cal. 417.

6. The power given to a Magistrate to make a binding declaration as to the possession of any property, is an exceptional one, and Act X of 1872 s. 530 limits the exercise of that power to cases in which the Magistrate is satisfied that a dispute, likely to induce a breach of the peace, exists; it is this likelihood, with the consequent necessity for immediate action, which alone warrants action by the Magistrate. The grounds for his belief as to the existence of a likelihood of a breach of the peace, must be recorded. (Cr.) I. L. R. 4 Cal. 650.

7. Although no particular mode of giving notice, calling upon parties to act under this section before the Magistrate, has been provided, yet the language of the section indicates that the notice shall be addressed to known individuals, and not in the form of a public proclamation on citation. (Cr.) *Ib.*

8. There is no provision in Act X of 1872 for allowing an intervenor to come in, in the middle of proceedings held by a Magistrate under this section. (Cr.) *Ib.*

See Bench of Magistrates 1.
Limitation 28.
,, (Act IX of 1871) 35.
Possession 17.

Landlord and Tenant.

1. There is no law in this country which converts a holding at will, from year to year, or for a term of years, into a permanent tenure, merely because the tenant, without any arrangement with his landlord, builds a dwelling-house upon the land demised. I. L. R. 3 Cal. 696.

2. The nature of a holding, as between —, must always be a matter of contract, either expressed or implied. If there is no express agreement, a tenant becomes a tenant-at-will or from year to year, and is liable to be ejected upon a reasonable notice to quit unless some local custom to the contrary is proved. *Ib.*

3. When the relationship of — has once been proved to exist, the mere non-payment of rent, though for many years, is not sufficient to show that the relationship has ceased; and a tenant who is sued for rent and contends that such relationship has ceased, is bound to prove that fact by some affirmative proof, and more especially so when he does not expressly deny that he still continues to hold the land in question in the suit. I. L. R. 4 Cal. 314.

4. A decree obtained by a landlord against his registered tenant renders the tenure comprised in the decree liable for sale, although such tenure may have passed into other hands than those of the judgment-debtor. The landlord's remedy, however, in such a case, is strictly confined to the sale of such tenure under his decree. He cannot make a tenant personally liable for rent which accrued due before such tenant became the owner of the tenure. The remedies which are provided by the Rent Law for enforcing the payment of rent by sale of the tenure or by distress are remedies *in rem*. The personal liability of one tenant cannot be transferred to another. I. L. R. 4 Cal. 346.

5. The mere entry of the names of the tenants of a *Khot* in the Government registers as occupants under the Revenue Survey Act I of 1865 (Bombay), does not constitute an injury to the landlord of a tangible kind, of which the Civil Courts can take cognizance. The *Khot's* rights as landlord, if they can be established, cannot be prejudiced by any proceedings under the Survey Act, there being nothing in that Act, or the rules framed under it, which affects the rights of subjects of the Government *inter se*. I. L. R. 3 Bom. 134.

6. The utmost benefit which the tenants can derive, as against their landlord, from being entered as occupants under the Act, is a right to claim a deduction of the amount of assessment paid by them direct to the Government. If they deny his title, he can sue them either to establish his title and recover the full rent due to him under his contract with them, or to eject them as holding possession of his lands by a title which they themselves repudiate. *Ib.*

7. The plaintiffs were the registered holders of the village of Mankoli, in Ahmedabad Collectorate, for which they obtained a sunnud in 1864 under Act VII of 1863 (Bombay). The defendants were the descendants of the original owners of the village, who about 1768, finding themselves unable to meet the expenses attaching to the village, gave up their title to it to the ancestors of the plaintiffs on condition of retaining a third of the lands rent free as their *vanta*, or share, subject to no other condition than a house-tax: *Held* that the circumstances did not constitute the relationship of — between the parties; that the settlement made by the plaintiffs without the defendants' consent was not binding on the latter, and any payment made by them to Government was a purely voluntary one, to which they could not ask the defendants to contribute; also, assuming that the

LANDLORD AND TENANT (*continued*).

relationship of — did exist between the parties, a suit by the plaintiffs against the defendants would not lie for contribution to any expenses to which the plaintiffs as landlords might have been put in defending or perfecting their title. I. L. R. 4 Bom. 79.

8. The fact that the defendants had for some years paid to the plaintiffs part of the amount of quit-rent levied from the plaintiffs by Government, did not estop the defendants, when better informed of their rights, from contesting the title of the plaintiffs to any further payments. *Ib.*

9. Plaintiffs, alleging that S, through whom they claimed, had given B, who was represented by defendants, in July 1828, the lease of a certain house on the condition that B should pay a certain annual rent for such house, and, if he failed to pay such rent, that he should vacate the house, such condition being contained in a *Keraia-nama* executed by B in S's favor, sued defendants for the rent of such house for two years, and for possession of the same, alleging the breach of such condition : *Held* that, supposing that a tenancy had arisen in the manner alleged, the mere non-payment of rent by the defendants for 12 years prior to the institution of the suit would not suffice to establish that the tenancy had determined, and that the defendants had obtained a title by adverse possession, so as to defeat the claim ; for if once the relation of — were established, it was for defendants to establish its determination by affirmative proof, over and above the mere failure to pay rent. (F. B.) I. L. R. 2 All. 517.

10. A tenancy created by express contract between Hindoos in Calcutta, is within the words "matters of contract and dealing between party and party" in 21 Geo. III c. 70 s. 17, and the right of the parties and the incidents of the tenancy must be governed by Hindoo law. (O. J.) I. L. R. 5 Cal. 688.

11. Trees accede to the soil, and pass to the landholder with the land on the termination of a tenancy, and unless the tenant uses, during the term of his tenancy, his privilege, where he has it, of removing the trees, he cannot do so afterwards; he would then be deemed a trespasser. I. L. R. 2 All. 896.

12. Where a tenant has been ejected in the execution of the decree of a Revenue Court for arrears of rent from the land forming his holding, his tenancy then terminates, and with it all right in the trees standing on such land or power of dealing with them. A person, therefore, who purchases the rights and interests of a tenant after his ejectment in the execution of such a decree, cannot maintain a suit for the possession of the trees standing on the tenant's holding. *Ib.*

See Assignment 4.
Bhag-jote.
Cesses.
Distraint 1, 2.
Ejectment 5.
Jurisdiction 50.
Kubooleut.
Limitation 47.
Mochulka.
Pottah.
Registration 13.
Right of Occupancy.
Small Cause Court 7.
Tender 2.

Land taken for Public Purposes.

1. Where Government takes property from private persons under statutory powers (in this case under Act X of 1870), it is only right that those persons should obtain such a measure of compensation as is warranted by the current price of similar property in the neighbourhood, without any special reference to the use to which it may be applied at the time when it is taken by the Government, or to the price which its owners may previously have given for it. In accordance with this principle, the question for enquiry is, what is the market value of the property, not according to its present disposition, but laid out in the most lucrative way in which the owners could dispose of it. (O. J. Ap.) I. L. R. 2 Cal. 103.

2. A decree which apportions compensation made under Act X of 1870 s. 39 by a Court to whom such matter has been referred under s. 38 is final and cannot be questioned otherwise than by the appeal permitted under s. 39. No suit will lie in such cases. I. L. R. 4 Cal. 757. *Affirmed* by P. C. in judgment not yet reported, 9 March 1881.

See Limitation (Act IX of 1871) 97.
Relinquishment 5.

Land Tax.

See Building Lease 1, 2, 3.

Language.

See Practice (Criminal Trials) 6.

Lease.

1. No legal presumption of fraud arises from the mere fact of a — being obtained from the manager of an estate at an unusually low rate of rent. (P. C.) 2 P. C. R. 959 (21 W. R. 425).

1*a*. Where in a perpetual — there was a condition that, on default being made in payment of a certain number of instalments of rent, the — should be void : *Held* that, in a suit under Act X of 1859 s. 23 cl. 5 for cancellation of the — on account of a breach of the condition, the lessee was entitled to the benefit of s. 78, even although the defence set up was false in fact. (P. C.) 12 B. L. R. 439.

2. The agreement contained in the pottah to grant a renewal of the — does not create or vest in the lessees a fresh term of years, but merely gives them a right to a renewal if the lessor should attempt to turn them out of possession at the expiration of the term ; and it gives the lessor a right to the land, and to rent it to others if the lessees refuse to accept a pottah and execute a kubooleut for the renewed term. (P. C.) 3 P. C. R. 550 (L. R. 5 I. A. 164).

3. Where nothing is said in the ijara as to the duration of the new —, a term for a longer period than the original term cannot reasonably be implied. (P. C.) *Ib.*

4. The lessor in this case had no right to measure the lands in the absence of the lessees, nor herself finally to determine the rent at which the — should be renewed. If the rent at which the lessor offered to renew the — were too high, the lessees were not bound to accept it, but could compel the lessor to renew at a proper rate having regard to the stipulations of the —. (P. C.) *Ib.*

5. The stipulation in a mining — "if you take possession, according to your requirements, of extra land over and above this pottah, we shall settle any such lands with you at a proper rate," was held to entitle the lessee to a — of the additional land only if required for the purposes of the original —, but not for the purposes of selling it. (P. C.) 3 P. C. R. 737 (L. R. 7 I. A. 107; I. L. R. 5 Cal. 932).

6. A granted a — of his entire property to the plaintiff for a term of years, with power to enhance the rents and make settlements. Immediately afterwards A executed a pottah in favor of B, covering a portion of the same estate, whereby B's rent was to remain unchanged for a period conterminous with the plaintiff's —. In a suit by plaintiff against B and A's representative to have the pottah set aside, it was objected that, inasmuch as the deed had not been as yet set up against plaintiff, nor any injury shown to have been caused to him thereby, he had no cause of action : *Held* that the suit was maintainable. I. L. R. 1 Cal. 456 (25 W. R. 516).

7. Under the Hindoo law the granting of a —, though for a term, is an act within the scope of a zemindar's authority as manager and owner of the zemindaree, and is, as such, binding on his successor, unless, in the circumstances in which it was made, it was otherwise than *bonâ fide*. I. L. R. 2 Mad. 80.

8. The second proviso contained in Act VIII of 1865 (Madras) s. 11 Rule IV does not apply to a — which is

Lease (*continued*).

bonâ fide and valid under the general Hindoo law, and as such, falls under Rule I. This proviso does not amount to a repeal of the Hindoo law regarding ordinary leases, but applies only to such leases when in the circumstances in which they are made they amount to a fraud upon the power of the grantor's successor as manager, or to alienations made for the *personal benefit* of the grantee, and to the prejudice of the successor. *Ib.*

9. *Held*, on the construction of the — in this case, with reference to the first of the three grounds on which the representative in title of the lessor sued for the cancelment of the — under Act XVIII of 1873 s. 93 cl. (*c*), that as the — was intended to be perpetual, and as the rent had been paid to the Collector for many years under an arrangement effected between the parties to the —, and it was not shown that the plaintiff had repudiated this arrangement (even if he had the power to do so) or demanded payment of the rent directly to himself, payment of the rent by the lessees to the Collector did not amount to a breach of the conditions of the — ; with reference to the second ground, that the — being intended to be perpetual, and no arrears of rent being due, irregularity and unpunctuality in the payment of the instalments of rent in question were not breaches of the conditions of the — involving its forfeiture; and with reference to the third ground, that the condition as to the planting of trees and sinking wells being merely a prohibition and not a condition the breach of which involved the forfeiture of the —, the — could not be cancelled because the lessees had planted trees or sunk wells and allowed their tenants to do the same, without the lessor's consent. *Held* also that assuming that the lessor was entitled, on the third ground, to the cancelment of the —, cancelment was not to be deemed the invariable penalty for the breach of such a condition as that mentioned in that ground. I. L. R. 2 All. 437.

10. Reg. VIII of 1819 was intended to apply to leases which might have been avoided by the grantor or his heirs during the time that Reg. XLIV of 1793 was in force; but which, so far from having been avoided, had been acted upon by the parties after the expiration of ten years, and were treated and considered as in existence at the time when Reg. VIII of 1819 was passed. I. L. R. 5 Cal. 543.

11. A — of land, whereby the lessee is given the power of holding the land as long as he pleases, is determined by the death of the lessee. I. L. R. 4 Bom. 424.

See Assignment 4.
Building 8.
Building Lease.
Conveyance (Transfer and Assignment) 2.
Co-Sharers 3, 5, 6.
Enhancement 14.
Ferry 3.
Julkur 8, 9.
Jurisdiction 31.
Karanavan 1.
Landlord and Tenant 9.
Limitation (Act XV of 1877) 33, 45.
Mortgage 130.
Partnership 13.
Possession 7*a*.
Reclaimed Land 1.
Registration 4, 13, 26, 32, 35, 36.
Reimbursement 1.
Res Judicata 29.
Right of Occupancy 2, 10.

Legislative Council.

See Jurisdiction 9, 10, 45.
Privy Council 38.

Legitimacy.

1. The legal presumption is in favor of a child born in his father's house of a mother lodged and apparently treated as a wife, who was treated as a legitimate child by his father, and whose — was disputed after the father's death. (P. C.) 2 P. C. R. 493 (17 W. R. 1; 14 Moo. 346).

2. Whether a son of a Scotchman, retaining his domicile though resident in India, can, if born out of wedlock, become legitimate *per subsequens matrimonium*. (P.C.) 2 P. C. R. 505 (17 W. R. 35; 10 B. L. R. 88; 14 Moo. 267).

3. Without considering whether a Zillah Court could pass a judgment *in rem* determining the — of a party against all the world, the Privy Council held that the judgments pleaded in bar in this case could not be treated as one of that nature. (P.C.) 2 P. C. R. 517 (17 W. R. 104; 11 B. L. R. 244; 14 Moo. 367).

4. The acknowledgment of the — of a daughter affords a strong presumption in favor of the right of her mother to inherit from her. (P. C.) 2 P. C. R. 830 (26 W. R. 26; L. R. I. A. Sup. 192).

So also the acknowledgment by the father and by the whole family of the — of a son was held to raise some presumption of the marriage of the mother. (P. C.) 3 P. C. R. 287 (26 W. R. 36; I. L. R. 2 Cal. 184; L. R. 3 I. A. 291).

See Execution of Decree 4.
Hindoo Law (Inheritance and Succession) 17.

Lender.

See Loan.

Leprosy.

See Hindoo Law (Inheritance and Succession) 33.

Letter.

See Documents 3.
Letters of Administration.
Limitation (Act IX of 1871) 68.

Letters of Administration.

1. The applicant for — to the estate of a Hindoo widow, having concealed the existence and claims, of which he was aware, of the relatives of the deceased husband of the widow, on the application being dismissed, was ordered to pay the costs of the application and of the caveats entered by some of the relatives of the deceased husband. (O. J.) I. L. R. 2 Bom. 9.

2. Upon an application by the father of an infant Hindoo widow for the grant of — to him as her guardian of the estate of her deceased husband and of the estate of the husband's mother, it appeared that the only property of the husband consisted of a sum of money ordered to be paid to him under a certain decree upon his constituting himself the representative of the mother (which he had not done), that there were no unliquidated debts due by the husband, and that the sum of money in question was in the hands of the Official Trustee: *Held* that — could not be granted to the father, but that the widow could apply when she came of age, and that until that time the Official Trustee could pay the income to her next friend for her maintenance. (O. J.) I. L. R. 4 Cal. 87.

3. If Hindoos take out — at all, they must take out general letters; but — limited to certain property cannot be granted. (O. J.) I. L. R. 5 Cal. 2.

See Administrator-General 5.
Breach of Trust 1.
Court Fees 9.
Execution of Decree 21.
Hindoo Widow 30, 45.
Will 22, 52.

Letters Patent.

See Charter.

Libel.

1. The Court will not grant an injunction to restrain the publication of a —, nor to restrain, at the suit of an individual, an act of a corporate body, on the ground of such act being *ultra vires*, except where such individual has been damaged by such act in his rights of ownership, commodity, or easement. (O. J.) I. L. R. 1 Bom. 182.

2. There is no authority for the proposition that an individual is entitled to protection by way of injunction against the act of a corporation, though in excess of their powers, which affects that individual's character and reputation, whether private, professional, or commercial, which he would not have been entitled to had the act complained of been committed by an individual defendant, on the ground that the act in question was one which the corporation had no power to do under the instrument of corporation. (O. J.) *Ib.*

3. The Trustees of the Port of Bombay have the power to record their decisions and opinions with regard to matters connected with the business they have, under Act I of 1873 (Bombay), power to transact, whether such decisions or opinions are confined to statements of what they believe to be actual facts, or extend also to the giving of advice for the conduct of their successors in office with regard to such business, and whether the expression of such decisions, opinions, or advice may or may not contain statements injurious to the character or reputation of others. (O. J.) *Ib.*

4. Where therefore the plaintiff sought for an injunction to restrain the Trustees of the Port of Bombay from publishing two resolutions alleged to reflect injuriously on his character and reputation, on the ground that it was not within the powers conferred on the trustees by Act I of 1873 (Bombay) to discuss or pass resolutions affecting his character, and that the publication of such resolutions was calculated to injuriously affect him in his commercial relations with the Government: *Held* that the injunction could not be granted, and that though the Court, under certain circumstances, might have the power of so framing an order for injunction as to produce the effect of cancelling the minutes of a resolution recorded in the books of a corporate body, yet it could not order the trustees of such body to pass and record a resolution dictated by the Court. (O. J.) *Ib.*

5. The Trustees of the Port of Bombay, who are, under Act I of 1873 (Bombay), bound to keep minutes of their proceedings and resolutions and to forward copies of such minutes to the Secretary to the Local Government, passed, in relation to the hiring by them to the plaintiff of one of their steamers, the following resolution: "Mr. Shepherd's (the plaintiff's) offer of Rs. 520 in full of all claims should be accepted, but any further transactions with him should be avoided if possible." Copies of this resolution, made by clerks in the employ of the Trustees, were recorded in two books in the Office of the Trustees, and other copies, also made by such clerks, were forwarded to the Secretary to Government, and to the plaintiff himself: *Held* (1) that the words of the resolution amounted in law to a —, (2) that the act of the Trustees in transmitting a copy to the Secretary to Government was a publication of the —, and (3) that such publication was privileged; and that the giving of the resolution to be copied by clerks of the defendants, if it were a publication, was also privileged. *Semble* that, had the defendants succeeded on the plea of privilege only, each should have borne their own costs. *Held*, however, that, as the plaint contained allegations of express malice and want of *bonâ fides* on the part of the Trustees in passing and publishing the libellous resolution complained of, which allegation obliged the Trustees to plead justification, on which plea also they were successful, the plaintiff must pay the costs of the suit. (O. J.) I. L. R. 1 Bom. 477.

6. Plaintiffs and defendants were the members of two firms, each creditors of an absconded debtor, one Bávachi Kunhi Pakhi. The plaintiff's firm brought a suit to recover the sum alleged to be due to them by the said Bávachi Kunhi Pakhi, and pending that suit the defendant's firm presented a petition to the Court which contained the statements complained of, which were principally to the effect that the plaintiffs had prejudiced the petitioners by suing the said Bávachi Kunhi Pakhi for sums greatly in excess of their just claims against him. The Judge found that there was no malice in fact, but that the statements were untrue and calculated to damage, and he, accordingly, gave a decree to the plaintiffs with damages: *Held* on appeal, reversing the decision of the Lower Court, that as the defendants were creditors of an absconded debtor, and deeply interested in seeing that his estate was not swept off in satisfaction of an excessive claim made by the earliest suitor, they, in presenting a petition pointing out what they considered suspicious elements in the plaintiff's claim against such debtor, were at all events entitled to the qualified privilege of persons acting in good faith, and making communications with a fair and reasonable purpose of protecting their own interest. I. L. R. 2 Mad. 13.

License.

See Excise 2, 3, 4.
Ferry 3.
Patent 1.

Lien.

1. Held that the plaintiffs were neither in the position of managers of the concern nor of consignees of the indigo, and were therefore not entitled to any — upon the indigo similar to the — possessed by the manager or the consignee of a West India estate. (O. J. Ap.) I. L. R. 2 Cal. 58.

2. Held that the plaintiffs could not claim a — on the indigo on grounds of a salvage character; it being essential to such a — that the person spending the money of which he claims a reimbursement should have some interest in the property or some right or duty towards the owners who are to be affected by the claim, impelling him to make the expenditure. A mere volunteer can in general claim no such — . (O. J. Ap.) *Ib.*

3. Held that there was not such evidence of such knowledge and acquiescence on the part of A and B with respect to the advances by and the assignments to the plaintiffs as would estop them from disputing the plaintiff's claim. (O. J. Ap.) *Ib.*

4. There is no — by custom upon an indigo factory, or upon the produce of an indigo factory, in respect of any debt of the factory. I. L. R. 3 Cal. 231.

5. In order that a defendant may set up his right of — as a defence, he must be prepared to show that, when the suit was brought, he was ready to give up the property over which he claimed the —, on being paid the amount due to him, and therefore, he cannot plead his right of — when he denies and contests the plaintiff's title to the property. (O. J. Ap.) I. L. R. 4 Cal. 322.

See Attached Property 3.
Attachment 7, 18.
Attorney and Client 5, 6, 8, 9.
Bond 6.
Decree 10.
Execution of Decree 39.
Hindoo Law (Coparcenary) 7, 8.
,, Widow 25.
Indigo 1.
Money Decree 4, 5.
Mortgage 38, 47, 75, 94, 101, 105, 107, 110, 111, 112, 119, 120, 122.
Sale (in Execution of Decree) 27.
Trans-shipment 1.
Vendor and Purchaser 5, 6.

Life Interest.

See Gift 12.
Grant 3, 4.
Hindoo Widow 15, 17, 57.
Husband and Wife 4.
Jagheer 2.
Mahomedan Law 5.

LIFE INTEREST (*continued*).

See Mokurruree 5, 10.
Oudh Estates 4.
Relinquishment 5.
Will 10, 49, 62.

Light.

See Right to Light and Air.

Limitation.

1. In what cases — may be pleaded by Government in a suit brought against the estate of the ex-King of Delhi. (P. C.) 2 P. C. R. 76 (10 W. R. 55; 11 Moo. 277). *See* (P. C.) 2 P. C. R. 732 (18 W. R. 394).

2. There is no distinction as regards — to be made in favor of a person claiming under an execution-sale, as contra-distinguished from the representatives of any person claiming under an ordinary assignment or conveyance. (P. C.) 2 P. C. R. 202 (11 W. R. P. C. 29; 2 B. L. R. P. C. 75; 12 Moo. 366).

3. In deducting any period under Reg. VII of 1822, it must be shown that plaintiff was "from good and sufficient cause precluded from obtaining redress." The pendency of an appeal to the Privy Council does not put the party who, subject to that appeal, is the owner of an estate, under a legal disability to bring a suit in that character against third parties; and is therefore not such good and sufficient cause as above mentioned. (P. C.) 2 P. C. R. 225 (12 W. R. P. C. 6; 12 Moo. 306; 2 B. L. R P. C. 111).

4. How applied in a suit to recover excess rents collected by one or two co-sharers who hold their shares separately and collect their rents separately. (P. C.) 2 P. C. R. 438 (16 W. R. P. C. 1; 8 B. L. R. 93).

5. *Quære.* Whether the orders of the Privy Council are orders of a Court and subject to any law of —. (P. C.) 2 P. C. R. 564 (17 W. R. 292; 14 Moo. 465; 10 B. L. R. 101).

6. How applied in a suit for the recovery of a share of an estate conveyed to plaintiff by a deed of gift. (P. C.) 2 P. C. R. 750 (19 W. R. 101). *See* (F. B.) I. L. R. 5 Cal. 584.

7. In a suit to establish a right of enhancement of rent of an under-tenure, the holder of which contended that, even if the zemindaree right had passed to plaintiff by purchase, he had never received rents and his claim was barred by —, and with reference to a compromise under which, at the close of a former litigation, a certain sum had been paid to plaintiff as mesne profits, it was argued that the last item of the rent of the under-tenure, entering into that sum, must have accrued more than 12 years previously: *Held* that the payment of the sum within the 12 years was evidence of a recognition of title sufficient to exclude the notion of an adverse possession for more than 12 years. (P. C.) 2 P. C. R. 785 (19 W. R. 171; 11 B. L. R. 203; L. R. I. A. Sup. 165).

8. The — prescribed in Act IX of 1859 s. 20, for claims of property of rebels forfeited by Government, is general and without exception of minors and other persons under disabilities as provided by Act XIV of 1859 s. 11. (P. C.) 2 P. C. R. 957 (21 W. R. 318; L. R. 1 I. A. 167; 13 B. L. R. 292). *See also* 3 P. C. R. 236 (25 W. R. 285; L. R. 3 I. A. 7; I. L. R. 1 Cal. 226).

9. In a suit to recover possession of certain villages belonging to a talook sold by Government for arrears of revenue, it was held that a new grant of the villages by Government to the second defendant at an increased revenue did not give the plaintiff a new cause of action. (P. C.) 3 P. C. R. 30 (22 W. R. 187; L. R. 1 I. A. 335).

10. In the case of succession by a reversionary heir after the death of a widow who takes by inheritance from her husband and is dispossessed, the period of — as against the reversionary heir, in the absence of fraud, is not to be reckoned from the time when he succeeds to the estate, but from the time at which it would have been reckoned against the widow if she had lived and brought the suit. (P. C.) 3 P. C. R. 94 (23 W. R. 214; 15 B. L. R. 10; L. R. 2 I. A. 113).

11. In a suit to recover possession of certain houses and grounds appertaining to plaintiff's zemindaree, it was held that the plea of — could not be sustained without evidence as to the title under which defendants, or those under whom they claimed, held the property in question; whether in their own right or as trespassers, or under an arrangement with the plaintiff. (P. C.) L. R. 5 I. A. 206 (I. L. R. 2 Mad. 23).

12. By Common Law the right to maintenance is one accruing from time to time according to the wants and exigencies of a Hindoo widow, and a Statute of — might do much harm if it should force widows to claim their strict rights and commence litigation which, but for the purpose of keeping alive their claim, would not be necessary or desirable. (P. C.) 3 P. C. R. 617 (L. R. 6 I. A. 114; I. L. R. 3 Bom. 415.

13. Plaintiff having proved his title to the land, defendant was bound to prove that plaintiff has lost it by reason of his (the defendant's) adverse possession for twelve years, which burden, it was held, the defendant had not satisfied. (P. C.) 3 P. C. R. 809.

14. A suit for possession of certain lands "by establishing the plaintiff's howla right" and for mesne profits, brought against a shareholder of the talook in which the lands are situated, a former talookdar, and certain ryots who paid rent to the first defendant, is not a suit to recover the occupancy of lands from which the plaintiff has been illegally ejected by the person entitled to receive the rent within the meaning of Act VIII of 1869 (Bengal) s. 27, and is not governed by the — provided by that Section. I. L. R. 1 Cal. 325.

15. Although it has been declared by a competent Court that the revenue sale of a zemindaree in 1848 is to be treated as a mere private sale between the defendants on the one hand and the auction-purchaser and the subsequent transferees on the other hand, it by no means follows that, after the zemindaree came back to the defaulting proprietor, the under tenants would not be entitled to rely upon Act I of 1845 s. 29 for being restored to their tenures. 25 W. R. 425 (I. L. R. 2 Cal. 1).

16. An appeal by the local Government under Act X of 1872 s. 272 is within time under Act XI of 1874 s. 23, if presented within six months from the date of acquittal. The sixty days' rule under Act IX of 1871 sch. 2 art. 153 does not apply. (F. B. Cr.) I. L. R. 2 Cal. 436.

17. An Act of —, being restrictive of the ordinary right to take legal proceedings, must, where its language is ambiguous, be construed strictly, *i.e.* in favor of the right to proceed. I. L. R. 1 Bom. 19.

18. The holder of a promissory note, payable on demand, dated 14th April 1870, demanded payment on 8th December 1872. The maker then paid the interest in advance up to 1st April 1873, upon the condition that the holder should make no demand until that date: *Held* that this transaction amounted to the substitution of a new contract for that contained in the promissory note; that the period of — must be reckoned from 1st April 1873; and that consequently a suit to recover the balance due on the note, instituted on 27th March 1876, was not barred. (O. J.) I. L. R. 1 Bom. 503.

19. Execution is a proceeding to enforce a decree of a Court, and comes under the head of purely adjective law. Such being the case, the law of — prevailing at the time of the application must govern. I. L. R. 1 Mad. 52.

20. When a judgment-debtor is not made a party to a proceeding under Act VIII of 1859 s. 246, he is not bound by the law of — to sue to establish his right to the property within one year from the order under that section releasing it from attachment. I. L. R. 1 Mad. 391.

21. Where a decree-holder entered into a compromise with the judgment-debtor, agreeing to accept payment by instalments, which was ratified by the Court executing the decree, the case being struck off the execution file on the basis of the compromise; and more than three years after the date of the Court's order sanctioning the compromise, subsequent proceedings were taken by the decree-holder to enforce the original decree: *Held* that such subsequent proceedings, when execution of the original decree had been already barred by —, could not avail to keep the decree alive. I. L. R. 1 All. 350.

22. A decree was made in favor of a firm in the name of an agent of the firm. The second and subsequent applications were made by an agent of the firm other than

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the agent named in the decree. Certain persons, alleging that they were the proprietors of the firm, applied for execution of the decree. The application was refused on the ground that the proceedings in execution taken by the last mentioned agent were invalid and execution of the decree was therefore barred by — : *Held* that such proceedings, however weak, were not invalid. I. L. R. 1 All. 510.

23. A plaint was filed on 12th March 1875, and the summons to the defendant to appear and answer issued on 13th March 1875, with the exception of an application for substituted service made on 20th March 1875, and which was refused, no further steps were taken in the matter until 21st March 1878, when the plaintiff applied for a fresh summons to issue, the time for the return of the first summons having long since expired : *Held* that the mere filing of a plaint, on the naked fact that a plaint is on the file, will not of itself prevent the operation of the law of — ; and that, as no steps had been taken to renew the summons for three years, and no sufficient cause to excuse the delay had been made out, the application was out of time and should be refused, (O. J.) I. L. R. 3 Cal. 312.

A summons ought not to be ordered to issue after the lapse of the period of — prescribed for a suit, unless the plaintiff has, in the meantime, done what he can to prosecute his suit with proper diligence. If a defendant is aggrieved by an order directing a summons to issue in such a case, he ought to apply to set aside the order and the summons under it. (O. J.) I. L. R. 5 Cal. 126.

24. On the presentation of the last of a series of applications made for the execution of a decree, the Court is competent to consider the question whether, on the date of making a prior application for execution, the decree sought to be enforced was barred by —, and that notwithstanding the fact that notice of such prior application had been served on the judgment-debtor under Act VIII of 1859 s. 216. I. L. R. 3 Cal. 518.

25. The words "no process of execution of any description whatsoever shall be issued on a judgment in any suit . . . . after the lapse of three years" in Act VIII of 1869 (Bengal) s. 58 mean that execution shall not issue unless a proper application for execution is made within three years from the date of the judgment. Therefore, where, on an application made on 5th July 1875, for execution of a decree for arrears of rent obtained on 31st January 1873, a warrant for the arrest of the judgment-debtors was issued, but not executed, a subsequent application for execution of the same decree made on 17th March 1876 was held not to be barred. I. L. R. 3 Cal. 547.

26. A, on 29th June 1871, obtained a decree for partition against B, his co-shareholder, and, on 28th November 1876, applied to have the execution proceedings struck off the file. The application was refused, and the partition was ordered to be completed at B's expense : *Held* that, as the execution proceedings taken by either one or the other shareholder were taken on behalf of both, — did not apply. I. L. R. 3 Cal. 551.

27. A entered into a verbal agreement with B to pay a debt due in monthly instalments, B reserving to himself the right to claim payment of the whole sum due, on default of three successive instalments. A failed to pay any instalment. Four years after the first instalment was due, B sued A to recover the sum due on the various instalments not barred by — : *Held* that B was not bound to sue for the whole amount due directly on A's failure to pay the three successive instalments. I. L. R. 3 Cal. 619.

28. Where land, the right to which is disputed, has been uninhabited and uncultivated, and no acts of ownership by any person can be proved to have been exercised over it, it is often necessary, for the purpose of deciding the question of —, to rely upon slight evidence of possession, and sometimes possession of the adjoining land, coupled with evidence of title, such as grants or leases ; and the Courts are justified in presuming, under such circumstances, that the party who has the title has also the possession. But where the land has been occupied, it is generally proper, for purposes of —, to deal with the question of possession as distinct from the question of title, for while the title may be in one person, a twelve years' possession may have barred that title. I. L. R. 3 Cal. 768.

29. A sued for enhancement of rent of certain lands for a specified year. On the dismissal of this suit, A, more than five years after the rent fell due, sued for arrears of rent for the same year : *Held* that A was not entitled to deduct the time occupied in the conduct of his enhancement suit from the period which elapsed since the rent first fell due in order to bring his case within the period of — prescribed for such last-mentioned suits by Act VIII of 1869 (Bengal) s. 29. I. L. R. 3 Cal. 791.

30. Plaintiff's ancestors purchased certain property from Government in 1861, subject to an unexpired lease held by the defendants of the same property. On the expiry of the lease in 1866, plaintiff endeavoured to obtain possession, but was opposed. He omitted to sue for possession till 1874, when the defendants set up certain *chukdaree* tenures, and the Court found that the defendants were entitled to the rights claimed, and also that plaintiff's suit was barred by —. Plaintiff thereupon, in 1876, brought a suit against the defendants for arrears of rent for the years 1866-72 : *Held* that, as the last rent thus claimed accrued due in 1872, plaintiff's right was barred by — under Act VIII of 1869 (Bengal) s. 29. I. L. R. 3 Cal. 817.

31. A plaintiff who, through want of enquiry or mistake, brings a suit which he is unable to establish, will not be allowed, on discovering his error and bringing a suit in which he would have been entitled to recover had he brought it within time, to take advantage of his own mistake to relieve himself from the law of —. *Ib.*

32. A rent suit under Act VIII of 1869 (Bengal) must be brought strictly within the term of three years prescribed by s. 29 of that Act, which contains the only law of — applicable to the case. Where, therefore, the last day of the term so fixed was a close holiday, and the plaint in such a suit was filed on the following day : *Held* that inasmuch as s. 29 contains no provision for relaxing the term fixed by it, such as is contained in Act IX of 1871, the suit was barred. I. L. R. 4 Cal. 50.

33. In a suit by a purchaser to recover possession of an estate sold for arrears of Government revenue due in respect of such estate, the period of — cannot be calculated, under any circumstances, from a day anterior to the date of purchase. I. L. R. 4 Cal. 103.

34. A purchased the right, title, and interest of B, a judgment-debtor, in certain lands, at an auction-sale in execution of a decree in October 1863, was put in *formal* possession in January 1865, and died without ever having obtained *actual* possession. After his decease, a suit was filed in September 1875, on behalf of his minor son C, against the defendants, who obstructed his taking actual possession : *Held* that if B was in possession at the time of the sale, that is to say, within twelve years before the institution of the suit, C was not barred by —. I. L. R. 4 Cal. 216. *See also* 48 *post*.

35. For the purpose of computing the period of — prescribed by Act VIII of 1869 (Bengal) s. 29, the calculation is to be made according to the English calendar. I. L. R. 4 Cal. 497.

36. An application for execution of a decree on behalf of all the judgment-creditors was presented in Court by a mookhtar, who had himself appended to such application the names of all of them but one who had signed his own name : *Held* that, although exception might fairly have been taken to the form of the application at the time it was presented, yet having once been accepted by the Court, it was substantially an application on behalf of all the judgment-creditors sufficient to prevent the operation of the law of —. I. L. R. 4 Cal. 605.

37. The non-payment of rent for a term of twelve years and more does not relieve an occupancy-ryot from the *status* of a tenant so as to give him a title to the land. Rent falls due at certain periods, and the failure to pay it becomes a recurring cause of action, and, therefore, where the right to take rent is admitted by the ryot, no question of — can arise. I. L. R. 4 Cal. 661.

38. If a decree has once been allowed to expire, no subsequent application, although made *bonâ fide*, can revive it. I. L. R. 4 Cal. 708.

39. By a condition in the lease of a talook, additional rent became payable in respect of all lands, which, not being in a state of cultivation at the time of the lease, should be subsequently brought into cultivation, so soon as the lessee had enjoyed them rent-free for the space of seven years. Rent having become due under this condition on

LIMITATION (*continued*).

certain lands which had not been in a state of cultivation at the time of the making of the lease, the lessee deposited in Court, as the entire rent payable in respect of the talook, the same amount as he had paid in previous years. In a suit brought a year after the lessor had notice of such deposit, to recover the entire rent payable in respect of the lands newly brought into cultivation : *Held* that such suit having been instituted more than six months after service of notice of such deposit on the lessee, was barred under Act VIII of 1869 (Bengal) s. 31. I. L. R. 4 Cal. 714.

40. Formal possession given to a decree-holder by an officer of the Court in execution of his decree, is sufficient to give him a fresh cause of action; and notwithstanding that he may never have obtained actual possession, he or his assigns may sue to recover possession at any time within twelve years from the time when such formal possession was given. I. L. R. 4 Cal. 870. *See also* 48 *post.*

41. The plaintiff and the defendant were owners, respectively, of two adjoining houses, having a space between them belonging to the plaintiff. The roof of the defendant's house, built more than thirty years previously, projected over a part of this space. The plaintiff built a new story to his house, with a roof overhanging the roof of the defendant's house, and under an alleged custom of the country (Ahmedabad) claimed a right to remove the part of the defendant's roof which projected over his (plaintiff's) land. He also sued to establish his right to an easement as against the defendant of compelling the defendant to receive upon the roof of his house the rain water which flowed from the newly-erected roof of the plaintiff: *Held* with regard to the former claim, that if the enjoyment by the defendant were considered as possession by him, of the space occupied by his projecting roof, the — Act extinguished the plaintiff's right to sue; and if such enjoyment were to be regarded as a mere easement, then the uninterrupted user of more than thirty years vested in the defendant a proprietary right to the same: *Held* further, with regard to the plaintiff's claim to an easement, that the plaintiff could only have acquired such easement either by contract or prescription, on neither of which did he rely. I. L. R. 3 Bom. 174.

42. No custom can be admitted to override the provisions of the — Act. *Ib.*

43. In computing the period of — prescribed for an appeal under cl. 10 of the Letters Patent, the time requisite for obtaining a copy of the judgment appealed from cannot be deducted, such copy not being required, under the rules of the Court, to be presented with the memorandum of appeal. (F. B.) I. L. R. 2 All. 192.

44. A — Act is not intended to define or create causes of action, but simply to prescribe the periods within which existing rights may be enforced. I. L. R. 3 Bom. 207.

45. In a suit to recover possession of land under cultivation, when the defendant pleads adverse possession, it is under ordinary circumstances for the plaintiff to show *primâ facie* that the cause of action upon which he is suing is not barred by —, and not for the defendant to prove his adverse possession in the first instance; but when a suit is brought for possession of jungle or unculturable lands, or lands which have never been under cultivation, the rule is different, and the defendant must establish his adverse possession for more than 12 years. I. L. R. 5 Cal. 36.

46. A suit for an account against an agent, employed to collect rents, is barred under Act VIII of 1869 (Bengal) s. 30, after the expiration of one year from the time of his resigning or leaving his agency. I. L. R. 5 Cal. 303.

47. Where a landlord does not himself directly take steps to interfere with the rights of cultivation of his tenants, but does so through other persons, whose acts he may, if it so pleases him, afterward ignore, he is not in a position to set up a special plea of — under Act VIII of 1869 (Bengal) s. 27. I. L. R. 5 Cal. 317.

48. Delivery of possession by going through the process prescribed by Act VIII of 1859 s. 224 is the only way in which the decree of the Court awarding possession to the plaintiff can be enforced; and as, in contemplation of law, both parties must be considered as being present at the time when the delivery is made, such delivery must, as against the defendant, be deemed equivalent to actual possession. As against third parties such symbolical possession is of no avail, because they are not parties to the proceedings. But if the defendant subsequently dispossesses the plaintiff by receiving the rent and profits, the plaintiff will have twelve years from such dispossession to bring another suit. (F. B.) I. L. R. 5 Cal. 584.

49. The period of — within which a suit for arrears of rent may, under Act VIII of 1869 (Bengal) s. 29 be instituted, must, in the absence of any special agreement, be calculated from the last day of the year following the expiration of the year for which such rent is claimed. I. L. R. 5 Cal. 713.

Overruled by F. B. The last day on which such suit can be instituted is the last day of the third year from the close of the year in which the rent became payable. The word "arrear" in s. 29 means "rent in arrear." (F. B.) I. L. R. 6 Cal. 325.

50. When a tenant has been sued for arrears of rent and a decree obtained against him under Act VIII of 1869 (Bengal) s. 52, which provides for the stay of execution if the amount of the arrears, together with interest and costs of suit, be paid into Court within 15 days from the date of the decree, and the Court is closed on or before the last day of the period so limited, the tenant is at liberty to pay into Court the arrears, interest, and costs on the first day that the Court reopens; and if he does so, execution must be stayed. I. L. R. 5 Cal. 906.

51. The law of — governing a suit for a debt is that law which is in force at the date of its institution. I. L. R. 6 Cal. 340.

See Attached Property 1.
Building 1.
Certificate 2.
Co-Sharers 2.
Costs 1.
Declaratory Decree 11.
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Putnee 10.
Res Judicata 28.
Right of Occupancy 12.
Sheriff 7.
Small Cause Court 15.
Soonderbunds 1.
Succession 5.
Trust 9.
Vendor and Purchaser 7.

Limitation (Act X of 1859).

1. The — applicable to a suit for rent under Act X of 1859 is that provided by s. 32 of that Act, and not that provided by Act XIV of 1859; the special legislation contained in the Rent Law not being repealed by the general law of limitation, either by express words or necessary implication. (P. C.) 2 P. C. R. 740 (19 W. R. 5).

See Putnee 1.

Limitation (Act XIV of 1859).

1. Meaning of "some proceeding" in s. 20. Proceedings in execution shall be considered as being *bonâ fide* carried on every day of the time and every hour of every day, until a final decision is passed upon any pending point. (P. C.) 2 P. C. R. 351 (14 W. R. P. C. 21; 13 Moo. 479; 5 B. L. R. 611. *See also* 15 W. R. 51, 182, 530; (P. C.) 2 P. C. R. 564 (17 W. R. 292; 10 B. L. R. 101; 14 Moo. 465); 17 W. R. 396; (P. C.) 2 P. C. R. 615 (18 W. R. 76; 11 B. L. R. 23); 23 W. R. 327; I. L. R. 2 All. 285.

2. S. 1 cl. 13 does not apply to a suit in which one member of a joint Hindoo family, representing the rest of the members, sues to redeem a mortgage in which the plaintiff's title to redeem is questioned, and the question of joint or not joint property has only to be decided incidentally for the purpose of establishing that title as against strangers. (P. C.) 2 P. C. R. 397 (15 W. R. P. C. 24; 14 Moo. 1; 6 B. L. R. 530).

3. Before a person can obtain the benefit of s. 5, he must show (1) that he is a purchaser (the meaning of which term defined), (2) that he is a purchaser *bonâ fide*, and (3) that he is a purchaser for valuable consideration. (P. C.) *Ib. See also* 3 P. C. R. 61 (23 W. R. 99; 14 B. L. R. 386; L. R. 2 I. A. 48).

4. A suit against a *del credere* agent on a balance of accounts in respect of dealings regarding which there is no express written contract is governed by the three years' limitation prescribed by s. 1 cl. 9. (P. C.) 2 P. C. R. 482 (16 W. R. P. C. 35; 14 Moo. 134; 10 B. L. R. 15).

5. The execution of decrees of the High Court made on appeal from the District Courts was governed by s. 20. (P. C.) 2 P. C. R. 564 (17 W. R. 292, 14 Moo. 465; 10 B. L. R. 101).

6. How applied in cases of decrees appealed to the Privy Council. (P. C.) *Ib.*

7. A petition presented *bonâ fide* by a decree-holder for execution in one suit of money attached in another suit is a proceeding taken within the meaning of s. 20 to enforce or keep in force a decree. The fact that it was in the end abortive does not take from it the character of a proceeding to enforce the decree. (P. C.) 2 P. C. R. 615 (18 W. R. 76; 11 B. L. R. 23). *See also* 17 *post.*

The *onus* of proving want of *bona fides* is on the party charging it. (P. C.) 2 P. C. R. 926 (21 W. R. 97; 13 B. L. R. 169).

A proceeding striking off a former application for default of prosecution was held not a proceeding to keep the decree alive. I. L. R. 2 All. 285.

8. The — in s. 1 cl. 15 embraces every kind of mortgage, including usufructuary mortgages. The acknowledgment referred to in the clause must bear the signature of the mortgagee himself; the signature of an agent would not satisfy. The words of the Statute, being one of limitation, ought to receive such a construction as the language in its plain meaning imports. (P. C.) 2 P. C. R. 897 (20 W. R. 375; 13 B. L. R. 177). *See also* I. L. R. I All. 642.

9. According to s. 14, a plaintiff is entitled to deduct the whole time in which he has been fruitlessly engaged in prosecuting a suit *bonâ fide* and with due diligence for the same cause of action, in which he fails in consequence of a final determination that the Court had no jurisdiction. (P. C.) 2 P. C. R. 903 (20 W. R. 380; 13 B. L. R. 146).

10. A right to *toda giras huk* was held to be an "interest in immoveable property" and governed by s. 1 cl. 12. (P. C.) 2 P. C. R. 933 (21 W. R. 178; 13 B. L. R. 182; L. R. 1 I. A. 23).

11. So also a suit upon a compromise based upon the assumption that there was an antecedent title to the land acknowledged and defined by the contract which is only part of the evidence adduced to prove that title. (P. C.) 2 P. C. R. 948 (13 B. L. R. 312; L. R. 1 I. A. 157).

11*a*. Where the bulk of the estate of a Hindoo family is held and managed by a single member of the family, and the other members receive and enjoy part of the lands as seer, the possession of the bulk of the estate by the manager is not adverse, so as to bar, under s. 1 cl. 13, a suit by the others for partition; unless there are circumstances to show that they accepted the seer lands in lieu of the shares that would have been allotted to them on a partition. (P. C.) L. R. 1 I. A. 9.

12. In an action brought upon a mortgaged bond which combines a personal obligation with the pledge of property, where the claim is founded, not upon the contract to pay the money, but upon the hypothecation of the land, and the object is to obtain a sale thereof as against purchasers under a subsequent mortgage bond, the suit is governed by s. 1 cl. 12. (P. C.) 3 P. C. R. 222 (25 W. R. 84; L. R. 3 I. A. 1; I. L. R. 1 Cal. 163).

13. The period of limitation resulting from Act VIII of 1859 s. 246 should, in the case of a minor, be modified by the operation of Act XIV of 1859 ss. 11 and 12. (P. C.) 3 P. C. R. 236 (25 W. R. 285; L. R. 3 I. A. 7; I. L. R. 1 Cal. 226).

14. The words "nothing in the preceding section shall apply to a judgment in force at the time of the passing of the Act" in s. 21 mean that nothing in the preceding Section should prejudicially affect the right of a creditor under a judgment in force at the time of the passing of the Act; and the words "*but* process of execution *may* be issued" mean that, notwithstanding anything mentioned in the preceding Section, execution might issue either within the time limited by law, or within three years next after the passing of the Act, whichever should first happen. The substitution of the word "must" or "shall" for the word "may" can only be done for the purpose of giving effect to the intention of the Legislature. In the absence of proof of such intention, the word "may" must be taken in its natural, and therefore in a permissive and not in an obligatory sense. (P. C.) 3 P. C. R. 423 (L. R. 4 I. A. 127; I. L. R. 3 Cal. 47).

15. Where a testator, in giving the whole of his property to his eldest son, recognised the claims, by Hindoo law, of the younger sons and the widows to maintenance, and made specific provisions with regard to the younger sons (giving them the profits of particular villages), but made no specific arrangements for the widows (merely requiring that they should be maintained and treated with proper respect): *Held* that the will did not create a right which was a specific "charge on the inheritance of any estate" within the meaning of s. 1 cl. 13. (P. C.) 3 P. C. R. 617 (L. R. 6 I. A. 114; I. L. R. 3 Bom. 415).

16. The defendants having been put into possession by the Government who were entitled to the lands in dispute, and having been maintained in possession by the Magistrate under Act XXV of 1861 s. 318, if the plaintiffs had wished to contend that the defendants had been wrongfully put into possession, and that the plaintiffs were entitled to recover on the strength of their previous possession without entering into a question of title at all, they ought to have brought their action within six months under Act XIV of 1859 s. 15. (P. C.) 3 P. C. R. 730 (L. R. 7 I. A. 73).

17. A proceeding taken *bonâ fide* and with due diligence before a Judge whom the party *bonâ fide* believes, though erroneously, to have jurisdiction, especially when the Judge himself also supposes that he has jurisdiction and deals with the case accordingly, is a proceeding to enforce a decree within the meaning of s. 20. (P. C.) 3 P. C. R. 761 (L. R. 7 I. A. 167; I. L. R. 2 All. 792).

18. Without deciding whether, in applying — under s. 1 cl. 13 in the case of a joint family governed by the Mitacshara law, the person on whose death the property which is alleged to be joint has descended must be taken to be the father or grandfather or some ancestor further back, the Privy Council was not prepared to affirm that the father might not be held to be that person in this case where the claim was twofold, viz., to establish plaintiff's right as a coparcener not only as to his original share in the joint estate, but also as to the moiety of the father's interest to which he became entitled on the father's death

LIMITATION (ACT XIV OF 1859) (*continued*).

by right of survivorship, and to have a partition on that basis. (P. C.) 3 P. C. R. 778 (L. R. 7 I. A. 181).

19. Held that limitation could not apply to the suit for the partition of immoveable property, because not only had plaintiff all along been in the enjoyment of part of that property, but he could, under s. 14, exclude from computation the time occupied in the prosecution of the suit of 1861, nor had there been a total exclusion from the joint family estate as a whole; whilst as regards the moveable property the appellant (defendant) was estopped by the proceedings of 1861 from setting up limitation as a bar to the respondent's claim. (P. C.) *Ib.*

20. An agreement between a principal and his agent commenced with an admitted balance, and clearly contemplated the existence of an account current containing mutual items of debit and credit. The agreement contained a stipulation that, on the adjustment of the accounts, the principal should be bound to pay such balance as might be found due from him. The account was kept accordingly as a continuous account, and contained several items which brought down the mutual dealings to March 1868. The agent sued in February 1871 to recover the balance due to him on the account: *Held* that the case fell within s. 8, and was not barred by —, even as to the items which were dated more than three years before the institution of the suit. (P. C.) L. R. 1 I. A. 346.

21. A promissory note, dated 2nd April 1868, stipulated that the principal amount with interest was to be repaid by half-yearly instalments of Rs. 150 each, and that in the event of any one of those instalments not being punctually paid, the whole amount was to become payable at once. Default was made in payment of the first instalment, which fell due on 2nd October 1868. In an action brought on 19th October 1871 for the recovery of the whole amount: *Held* that the right to bring the suit was barred under s. 1 cl. 10, and that the plaintiff's right to the immediate payment of the whole amount was not, under the note, subject to be divided by any subsequent payment, and that no such subsequent payment (assuming it to have been made) could, in the absence of any fresh agreement, supersede or suspend such right. (F. B.) I. L. R. 1 Bom. 125. *See also* I. L. R. 2 Bom. 356; I. L. R. 5 Cal. 97.

Unless the obligee under a bond waive the default (according to Act IX of 1871 sch. 2 art. 75 and Act XV of 1877 sch. 2 art. 75) and then when fresh default is made in respect of which there is no waiver, but the Courts have no authority (under Act VIII of 1859 s. 194 or Act X of 1877 s. 210) to compel the obligee to waive the default. I. L. R. 4 Bom. 96.

22. B died, leaving two widows K and R. Some time after B's death, P a son was born to R on the 15th September 1848. Some time before P's birth, a portion of B's *watan* lands had been made over to K by the Revenue authorities. The remaining portion of B's *watan* lands was placed by Government under sequestration, which was not removed until 1865. Shortly after P's birth, R petitioned the Revenue authorities, claiming the *watan* lands of B for P as B's son. On the 15th February 1849 the Revenue authorities on enquiry held that P was not the son of B and decided that K was entitled to retain the *watan* lands of B. On the 16th March 1872 K adopted a son B A. In a suit brought by P on the 4th December 1872 for a declaration that he (P) was the son of B, and for setting aside the adoption of B A by K, B A and K contended that the claim was barred by —. *Held* in special appeal that, the suit not being one to recover property, but to set aside the adoption, was within time under Act XIV. I. L. R. 1 Bom. 248.

23. *Quære* whether suits barred by — before Act IX of 1871 came into force, could, by reason of the alteration of the periods of limitation in the latter enactment, be now sustained. (I. L. R. 1 Bom. 295).

A claim barred by limitation, when Act IX of 1871 came into force, was not revived by the passing of that Act. I. L. R. 4 Bom. 230. *See also post* 28.

24. A defence of — cannot be raised for the first time, after there has been a remand on special appeal from the decree of the Court which has heard the case on remand. *Semble.* The Court ought not, even upon a special appeal in a case in which there has not been any remand, so to raise such question. I. L. R. 2 Bom. 120.

25. S. 1 cl. 16 extends to all suits in which a declaratory decree, and nothing more, is sought. *Ib.*

26. That clause does not extend to a suit in which the declaration sought is of a right in immoveable property. *Ib.*

27. Suits for maintenance not chargeable upon any estate are governed by s. 1 cl. 16. The cause of action in such cases does not arise until there has been a demand and refusal for maintenance. I. L. R. 2 Bom. 637.

28. In 1842 H C executed in favor of the plaintiff, his brother, who was in possession of the family as *kurta* and administrator of the estate of their father, a mortgage of his (H C's) share of the estate in consideration of Rs. 3700 advanced to him by the plaintiff. In the mortgage deed the money was expressed to be payable "on demand." In 1847 an amicable partition of the family property was proposed, and it was agreed that a certain portion should be allotted to the plaintiff in satisfaction of the debt due to him by H C, but this arrangement was never carried out. In a suit brought in 1876 against the representatives of H C for foreclosure of the mortgage, the plaintiff, who had admittedly been since 1842 in possession of the family property, alleged that no payment had ever been made in respect of the mortgage, nor any demand for payment until 1876. The defendant contended that the suit was barred by lapse of time: *Quære* whether a demand was necessary. *Held*, however, that a demand was made in 1847 on the agreement to partition the property, and that therefore the suit was barred by — as being brought more than 12 years after the cause of action arose. The above Act not only barred the remedy, but extinguished the right, and therefore the plaintiff could derive no benefit from the extended period of limitation given by Act IX of 1871 sch. 2 art. 149. (O. J. Ap.) I. L. R. 4 Cal. 283. *Overruled in* I. L. R. 6 Cal. 340. *See also* 23 *ante.*

29. On 12th December 1864, the plaintiff sold seven bars of gold to the defendants, and deposited with them the value thereof, to run at interest, and payable on demand. The defendants entered the amount in their own books, and furnished the plaintiff with a pass-book which contained this entry: "The account of the amount deposited by B (the plaintiff) with V (the defendants) of the city of Poona. The details of it are as follows: We have debited the amount to ourselves, and will return it whenever you demand it, *Shake* 1786 (A.D. 1864)." The defendants adjusted the account in the plaintiff's pass-book in July 1865 in these words: "Balance this day the 1st *Jyest vadya, Shake* 1787, Rs. 1,159-2-0. Interest on this sum will run from 1st *Jyest vadya, Shake* 1787 (A. D. 1865)." This entry was signed by the defendants. The plaintiff drew several times against this account within the first year, sometimes taking cash and sometimes gold. On the plaintiff's demanding the money in April 1877, the defendants refused to pay it. The plaintiff, therefore, filed a suit against them on the 25th June 1877. The defendants pleaded limitation: *Held* that, regarding the entry made by the defendants in the plaintiff's book as a promissory note, the suit was barred by limitation. I. L. R. 4 Bom. 230.

30. Under Act XIV of 1859, the period of limitation on a promissory note payable on demand, commenced to run from the date of the note and not from the date of demand. *Ib.*

See Divorce 1.
Instalments 1.
Limitation 8.
" (Act X of 1859) 1.
" (Act IX of 1871) 23.
Will 37.

Limitation (Act IX of 1871).

1. The provision in sch. 2 art. 129 that, with respect to a suit to establish or to set aside an adoption, the time when — begins to run is "the date of the adoption, or (at the option of the plaintiff) the date of the death of the adoptive father," does not interfere with the right to recover possession of real property within 12 years from the time when the right accrued. (P. C.) 3 P. C. R. 598 (L. R. 6 I. A. 110).

2. Where, in a suit by a judgment-creditor and execution-purchaser of a co-sharer to enforce his rights, it was decided not only that the share of that co-sharer passed to the purchaser under the sale in execution, but that the purchaser

LIMITATION (ACT IX OF 1871) (*continued*).

was entitled to hold that share in *ijmalee* or joint enjoyment with the other co-sharer; and against this decree the co-sharer, whose share had been sold, appealed, but execution was not taken out till after the appeal was finally disposed of: *Held* that there was no necessity or duty lying upon the other co-sharer to assert his rights to the sole enjoyment of his share until the execution-purchaser was put into possession, or, at all events, until the rights of the parties had been finally determined by the dismissal of the appeal, the case being governed by — sch. 2 art. 145. (P. C.) 3 P. C. R. 697 (L. R. 7 I. A. 1; I. L. R. 5 Cal. 644).

3. Plaintiff was held to have failed in taking this case out of the operation of s. 20 by showing that the authority of the person who had signed the acknowledgments relied on as the defendant's agent, had continued to the time when these acknowledgments were signed, or that the defendant had given any special authority to the said agent to sign the acknowledgments. (P. C.) 3 P. C. R. 710 (L. R. 7 I. A. 8; I. L. R. 6 Cal. 218).

4. The above Act contains two distinct sets of provisions, one relating to the limitation of suits, and the other to the manner of acquiring title and rights by possession and enjoyment. The object of the latter (s. 27) was to make more easy the establishment of rights of this description by allowing an enjoyment of 20 years, if exercised under the conditions prescribed by the Act, to give, without more, a title to easements. (P. C.) 3 P. C. R. 816 (L. R. 7 I. A. 240).

5. Where, therefore, an artificial *pyne* was constructed by the plaintiff's ancestors on the defendant's land for the purpose of irrigation more than 20 years ago, any Court which has to deal with the subject ought to refer such long enjoyment to a legal origin, and the right so created is not in any degree interfered with by s. 27. (P. C.) *Ib.*

6. Sch. 2 art. 31, which limits the time for bringing suits for the obstruction of water-courses to two years "from the date of the obstruction," does not apply to continuing nuisances, as to which the cause of action was renewed *de die in diem* so long as the obstructions were allowed to continue, as is expressly provided by s. 24. (P. C.) *Ib.*

7. Defendant gave plaintiff a promissory note on 5th August 1869, payable on demand with interest at 5 per cent. per annum. No sum either in respect of principal or interest was paid on the note, and payment was demanded for the first time in November 1875. Act XIV of 1859 contains no provision as to the date of the accrual of the cause of action in a suit on a promissory note payable on demand; but Act IX of 1871, which repeals Act XIV and applies to suits brought after the 1st April 1873, provides (in sch. 2 art. 72) that the cause of action in such a suit shall be taken to arise on the date of the demand. In a suit brought on the note after the demand: *Held* that the cause of action arose at the date of the note; and that, as a suit on it would have been barred under Act XIV if brought before 1st April 1873, the subsequent repeal of that Act would not revive plaintiff's right to sue. (O. J.) I. L. R. 1 Cal. 328. *Overruled* in I. L. R. 6 Cal. 340. *See also* I. L. R. 5 Cal. 897.

The same principle applies as well to a claim for arrears of maintenance or any other claims, as to one for possession of land. I. L. R. 3 Cal. 331. *Overruled* in I. L. R. 6 Cal. 340.

8. Where the owner of a house incapacitates himself by his own act from any possible use or enjoyment of a right of way to his house, he cannot be said, whilst this incapacity continued, to have been openly enjoying the easement and claiming a right thereto within the meaning of s. 27. (O. J. Ap.) 25 W. R. 228 (I. L. R. 1 Cal. 422).

9. Meaning of the terms "interruption," "abandonment," and "discontinuance," with reference to the above section. (O. J. Ap.) *Ib.*

10. S. 19 does not apply to a case where the plaintiffs do not allege they claim through the party by whose fraud they allege they were kept in ignorance of their rights. 25 W. R. 425 (I. L. R. 2 Cal. 1).

11. Sch. 2 art. 122 applies to a suit for a share of the residue of a testator's moveable property disposed of by his will. (O. J.) I. L. R. 2 Cal. 45.

12. Held that the purchase of the benefit of the decree by A's joint debtors, although it had the legal effect of satisfying the judgment-debt, did not affect the decree itself. The decree was not void but only voidable, and the sale under it binding on A. The suit therefore was in effect a suit to set aside a sale under a decree within the meaning of sch. 2 art. 14; and inasmuch as it was not brought within one year from the date of the sale, was barred. I. L. R. 2 Cal. 98.

13. Notice of execution of decree is not sufficient "process for enforcing" it within the meaning of sch. 2 art. 167. Such process means actual process by attachment in execution of the person or property of the debtor. (O. J.) I. L. R. 2 Cal. 123.

14. In 1860 certain shares in a Company then formed were allotted to S, on the understanding, as the plaintiffs allege, that 120 of such shares should, on the amount thereof being paid to S, be transferred to and registered in the books of the Company in the name of the plaintiffs. In 1862 the plaintiffs completed the payment to S in respect of the shares, and during his lifetime received dividends in respect of the said shares. S died in 1870, leaving a will, probate of which was granted to the defendant as his executor. In a suit brought by the plaintiffs after demand of the shares from the defendant, and refusal by him to deliver them, to compel the defendant to transfer the shares to the plaintiffs and register the same in their names, the plaintiffs' case was that the shares had been held in trust for them, and that consequently their suit was not barred by lapse of time: *Held* that the transaction between S and the plaintiffs did not amount to a "trust for any specific purpose" within the meaning of s. 10, or to a trust at all, but to an agreement of which the plaintiffs were entitled to specific performance, and that the limitation applicable was that provided by sch. 2 art. 113, and therefore the suit was not barred. Nor were the plaintiffs disentitled to relief by reason of any laches or delay in bringing the suit. I. L. R. 2 Cal. 323.

15. The periods of limitation in sch. 2 are to be computed subject to the provisions contained in the body of the Act. (F. B.) I. L. R. 2 Cal. 336.

16. An application made on the 8th January 1875 to execute a decree, the last preceding application having been made on the 8th January 1872, was held to be within the time allowed by sch. 2 art. 167. (F. B.) *Ib.*

17. The word "suit," as used in the Act, does not include "applications." (F. B.) *Ib.* *See also* 25 *post.*

18. A put in a petition to sue *in formâ pauperis* for possession of certain foreclosed property within the time prescribed by Act IX; but on her failing to appear on two occasions when called upon to give evidence of her pauperism, the case was struck off so far as the application to sue *in formâ pauperis* was concerned. At the instance of A, however, the case was again reopened and a day fixed for her appearance. Two days prior to this date, but at a time beyond the limit fixed by Act IX, A put in a petition asking that the petition which she then made to have her suit proceed as an ordinary suit might be joined with her application to sue *in formâ pauperis*, and the suit be duly tried in the ordinary way. She also paid in the regular amount of stamp duty for an ordinary suit. On the point of limitation it was held that the plaint might be considered as filed not on the day of filing the application to sue *in formâ pauperis*, but on the day on which the stamp duty was paid and application made to have the suit tried in the ordinary way. I. L. R. 2 Cal. 389. *See also* I. L. R. 1 All. 230.

19. The explanation to s. 4 only applies in cases where, under Act VIII of 1859 s. 308, the application for leave to sue *in formâ pauperis* is granted, and the application is treated and registered as a suit. *Ib.*

20. A suit for recovery of money paid by fraud and collusion is a suit for money received by a defendant for the plaintiff's use, and therefore, under sch. 2 art. 60, is barred, unless brought within 3 years of the date when the money was received. I. L. R. 2 Cal. 393.

21. The word "debt" in ss. 20 and 21 applies only to a liability for which a suit may be brought, and does not include a liability for which judgment has been obtained. Therefore, where the last application for execution of a decree had been made on the 14th December 1872, and a notice under Act VIII of 1859 s. 216 issued on the 19th January 1873, and on the 28th April 1873 the judgment-debtor filed a petition notifying part payment, which petition was signed by the judgment-creditor: *Held*, in an application for execution made on the 27th April 1876, that further execution was barred by —. I. L. R. 2 Cal. 468. *See also* 81 *post.*

22. A, as purchaser of a decree against B, applied for execution thereof, and having caused five fields of B to be

LIMITATION (ACT IX OF 1871) (*continued*).

sold in execution, purchased four of them at the Court sale, and one from an execution-purchaser. On the 10th July 1871, however, the High Court, in a miscellaneous special appeal by B, held A's application for execution to have been time-barred, and reversed the orders of the two lower Courts. A having been put in possession of the fields under the orders of the Lower Courts, B, on a reversal of those orders by the High Court, applied, on 9th July 1874, to have the fields restored to him together with mesne profits accruing during the time of his dispossession. The first Court awarded the fields to B with mesne profits; but the District Judge on appeal held B's application barred under Act IX of 1871 sch. 2 art. 166: *Held* by the High Court that the exception in art. 166 is not restricted to any particular species of appeal; that B's application fell within art. 167 and not art. 166, and therefore was not barred. I. L. R. 1 Bom. 19.

23. An application for execution of a decree was made in February 1868, and proceedings sufficient to bar limitation under Act XIV of 1859 were going on till 30th September 1871. The next application for execution of the decree, made in October 1872, was held to be barred by —. I. L. R. 1 Bom. 59. *See* I. L. R. 2 Bom. 294.

24. Held also that an informal application made on 30th September 1871 in the nature of a petition to the Subordinate Judge to give effect to the application of February 1868 by overruling certain objections of the Collector and enforcing execution of the decree, was not an application for the execution of a decree such as could bar —. *Ib.*

25. An application (under Rule 149 of the Common Law Rules of the Supreme Court of Bombay) by an attorney that his client should show cause why he should not pay the balance shown by the Taxing Master's *allocatur* to be due in respect of his bill of costs, and why, in default of such payment, attachment should not issue against the person and property of the client, is not a "suit" within the meaning of Act IX, and is not barred by any law of limitation now in force in British India. (O. J.) I. L. R. 1 Bom. 253. *See also* (as to "suit") 17 *ante*.

Applications for execution of decrees are not "suits" within the meaning of s. 15. (F. B.) I. L. R. 1 All. 97.

26. Held that the words "conveyed in trust" in sch. 2 art. 134 included devisees in trust, or are equivalent to the words "vested in trust" in s. 10; that the words "in good faith" in sch. 2 art. 134 and in s. 10 do not necessarily involve absence of notice in the purchaser of an existing trust or equity, for the fact of there being such notice may be an important element in the question whether there was *bona fides*; and that the defendant in this case, though he purchased with actual notice, must, having regard to all the circumstances, be held to have purchased in good faith and that the suit was accordingly barred by limitation, and that there is nothing in Act IX excluding from its benefit those asserting their right to claim under a *bonâ fide* purchase for value, by reason that those claiming against them are the objects of a charitable trust imposed on such property. (O. J.) I. L. R. 1 Bom. 269.

27. In 1873 the plaintiff sued for his share in certain ancestral property in the possession of the defendant, and alleged that the latter had been united with him in estate. He further admitted that he had lived separate from the defendant for 40 years previously to the institution of the suit, and that he had not during that period received any portion of the profits of the ancestral property. The defendant pleaded —. Both the Lower Courts held that the suit was governed by sch. 2 art. 127, and decreed in favor of the plaintiff on the ground that no demand by the plaintiff of his share and refusal to comply therewith had been proved: *Held* in special appeal that the defendant had, under Reg. V of 1827 (Bombay) s. 1 cl. 1, a prescriptive title in the immoveable estate sued for, by his uninterrupted possession as proprietor for more than 30 years before Act IX came into force, and that, therefore, the plaintiff's claim was barred, the effect of that Regulation being not only to bar the plaintiff's remedy, but to take away his right. The repeal of a statute or other legislative enactment, cannot, without express words or clear implication to that effect in the repealing Act, take away a right acquired under the repealed statute or other enactment while it was in force; and accordingly, although Act IX s. 2 sch. 1 expressly repealed Reg. V of 1827, it did not affect any prescriptive right or title which had, under s. 1 of that Regulation, been acquired before Act IX was passed. I. L. R. 1 Bom. 286. *See also* I. L. R. 1 Bom. 352, 592.

28. A solicitor was retained in July 1871 to execute a decree. In November 1871 a prohibitory order was made in the case, after which the solicitor did nothing more in the matter. In June 1872 the decree-holder and judgment-debtor settled the matters in dispute between them without the knowledge of the solicitor, but this compromise was not made through, or certified to, the Court which passed the decree. In a suit brought in December 1875 by the solicitor against the decree-holder to recover the amount of his bill of costs: *Held* that the plaintiff's claim was not barred by sch. 2 art. 85. (O. J.) I. L. R. 1 Bom. 505.

29. The Talookdaree Settlement Officer having assessed rent-free land, on the ground that it had been granted for service, and that service was no longer required: *Held* that this was not a sufficient defence to an action by the holder of the land, it not being shown that by the terms of the grant (assuming that there had been a grant of an estate burdened with service) the estate was determined by the remission of the service; and that if the grant was the grant of an office remunerated by the use of land, the right to assess was barred by the possession of a person, not claiming under the grantee, for a longer period than 12 years after the right to assessment accrued under sch. 2 art. 130. I. L. R. 1 Bom. 586.

30. It is clear from Act IX of 1872 s. 25 cl. 3 that the "promise" referred to in Act IX of 1871 s. 20 is a promise introduced, by way of exception, in a suit founded on the original cause of action, and not a promise constituting a new contract, and extinguishing the original cause of action. Accordingly, a suit is not barred which is brought on a bond or promissory note executed, in consideration of a barred debt, after the expiration of the period prescribed for its recovery. I. L. R. 1 Bom. 590, *Ib.* 2 Bom. 230.

31. Plaintiff's family were proved to have been in actual possession from 1841 to 1854 of some lands which originally belonged to Scindia, and in constructive possession during their attachment by the Enam Commission from 1854 to 1863, when, by a mistake in carrying out the orders of the British Government, the lands passed into the possession of Scindia, and remained with him till 1872, in which year the British Government, by exchange of lands, came into possession. In a suit brought on 29th July 1872: *Held* that the plaintiff's possession, not extending over 30 years, gave him no proprietary title under Reg. V of 1827 (Bombay) s. 1, which, as a law of positive prescription, is not repealed by Act XIV of 1859. Under the former Limitation Act, 12 years' adverse possession barred a suit without extinguishing the title; so that if the proprietor, who had been out of possession for more than 12 years, happened to regain it, the person who had been in adverse possession must fail in any suit to eject the proprietor, unless he sued within six months under s. 15 of the Act. The effect of Act IX of 1871 s. 29, however, is not merely to bar the remedy, but to extinguish the title of the original proprietor after 12 years of a possession adverse to him. I. L. R. 1 Bom 592.

32. Suit to recover the principal sum and one year's interest due on a bond dated 11th March 1866. By the terms of the bond the rent of certain land was assigned to the lender as security for interest. No date was specified in the bond for the payment of the principal sum. Interest was regularly paid up to October 1871, and the present suit was brought in June 1874: *Held* on special appeal by Holloway *J.* that, assuming that the period of limitation was three years and that it had run out both before action brought and before Act IX of 1871 came into operation, s. 21 of that Act operated to save the action; that, at the period of that law coming into force, there was still a contractual right existing; and that the right of action was restored by the payment of interest. *Held* by Morgan *C. J.* that no question of limitation arose; and that the lender having been constituted by the bond a trustee and receiver of the rents and profits of land, it was only on an adjustment of his accounts that the principal became payable. I. L. R. 1 Mad. 228. *Ruling of* Holloway *J. followed* in I. L. R. 6 Cal. 340.

33. The exception of payment of interest contained in s. 21 of the above Act is not confined to payments made

LIMITATION (ACT IX OF 1871) (*continued*).

after that Act came into force, but applies also to payments made before that date. I. L. R. 1 Mad. 264.

34. A suit was brought on an instrument in the nature of a promissory note payable on demand. The note was executed on 20th November 1871, and the suit was filed on 17th November 1875: *Held* that the suit not having been brought until after the day on which Act IX came into operation, was governed by — sch. 2 art. 72, which gives three years from the date of demand. *Held* also that the suit was not barred, there being no suggestion of any demand having been made before the suit was instituted. I. L. R. 1 Mad. 301. *First ruling followed in* I. L. R. 6 Cal. 340.

35. A dispute having arisen between plaintiff and defendant as to the ownership of certain landed property, the Magistrate, being informed of the dispute, held an enquiry under Act XXV of 1861 chap. 22, and finding himself unable to "determine who was in actual possession of the lands," placed them in charge of the Sub-Magistrate: *Held* that this was not an "order respecting the possession of the property," but an attachment proceeding recorded because the Magistrate was unable to determine which party was in possession; and that the limitation of three years prescribed by sch. 2 art. 46 was therefore inapplicable. I. L. R. 1 Mad. 309.

36. The right of a superior riparian proprietor to have the drainage water from his lands permitted to flow off in the usual course is not an easement within the meaning of s. 27. The English law of prescription and the provisions of s. 27 considered. I. L. R. 1 Mad. 335.

37. In a suit by plaintiff as eldest surviving male member of the vendor's family, claiming the office of Dharmakarta of certain pagodas, or that, if he were not entitled, some proper person might be appointed to it, and praying that an account might be taken of the pagoda property as Dharmakarta and also as executor of A (one of the daughters of the vendor's elder son C deceased): *Held* that the suit was barred by — sch. 2 art. 123; that the will left by L the former Dharmakarta (one of C's deceased sons), bequeathing the office to his sister A and her husband, was an act unequivocally hostile to the rights of the male members of the family, and as the will was at once acted upon, they must have had notice of this invasion of their rights; and that plaintiff was precluded from setting up a fresh right as accruing to him on the death of A as the only male survivor of the vendor's family by the provisions of s. 29. I. L. R. 1 Mad. 343.

38. The relation of a managing member of a Hindoo family to his coparceners does not necessarily imply an authority upon his part to keep alive, as against his coparceners, a liability which would otherwise become barred. The words of s. 20 must be construed strictly; and the manager of a Hindoo family, as such, is not an "agent generally or specially authorised" by his coparceners for the purposes mentioned in that section. I. L. R. 1 Mad. 385.

39. With reference to ss. 4 and 5 *b*, the order admitting an appeal after time, made *ex-parte* by a single Judge of the High Court sitting to receive applications for the admission of appeals, under a rule of the Court made in pursuance of 24 and 25 Vic. c. 104 s. 13 and the Letters Patent of the Court s. 27, is liable to be impugned and set aside at the hearing by the Division Court before which it is brought on for hearing, on the ground that the reasons assigned for admitting it are erroneous. (F. B.) I. L. R. 1 All. 34.

40. Where the defendants attested as correct the record-of-rights prepared at a settlement with them of an estate in which they were described as mortgagees of the estate, but which did not mention the name of the mortgagor: *Held* that there was an acknowledgment of the mortgagor's right to redeem within the meaning of sch. 2 art. 148. *Quære* that there was also an acknowledgment of the mortgagor's title. (F. B.) I. L. R. 1 All. 117.

41. The provisions of s. 7 are applicable in computing the period of limitation in suits to enforce a right of pre-emption. I. L. R. 1 All. 207.

42. An application for the partial execution of a joint decree by one of the decree-holders has not the effect of keeping the decree in force under sch. 2 art. 167. As where a decree of the Sudder Court awarded costs in the Lower Court to certain defendants separately, and to eight sets of defendants collectively, and to costs in the Sudder Court to three sets, and the only applications which were made for execution of the decree within the period of limitation were made by one of the defendants to recover his costs in the Lower Court and a fractional share of the costs in the Sudder Court awarded to his set of defendants, a subsequent application by him and the other defendants for execution of the decree was held to be barred by limitation. I. L. R. 1 All. 231.

43. *Semble* that the provisions of s. 15 are not applicable to suits or applications under Act XVIII of 1873. I. L. R. 1 All. 254.

44. Where the period of limitation prescribed for a suit expires when the High Court was closed for a vacation, and the Court, instead of opening after the vacation on the day that it should have re-opened, re-opened on a later day, and the suit was instituted when it did re-open: *Held* that it was instituted within time under s. 5*a*. I. L. R. 1 All. 263.

45. The purchaser of the equity of redemption of immoveable property, which is at the time of sale in the usufructuary possession of the mortgagee, takes "actual possession" of the property, within the meaning of that term in sch. 2 art. 10, when the equity of redemption is completely transferred to and vested in him. (F. B.) I. L. R. 1 All. 311.

So also limitation, in a suit for pre-emption, runs against the purchaser on foreclosure of conditional sale from the date when he obtained such possession of the *status* of his conditional vendor as entitled him to mutation of name and to the exercise of the rights of an owner. I. L. R. 1 All. 592.

46. Certain immoveable property was attached in execution of a money decree held by A dated 22nd August 1871 on 1st April 1872. The same property was subsequently attached in execution of a decree held by B dated 19th August 1871, which directed the sale of the property in satisfaction of a charge declared thereby. The property was sold in execution of the decree. The Moonsiff directed that the proceeds of the sale should be paid to B. A who claimed them on the ground that he had first attached the property, appealed against this order. The Judge, declaring that A was entitled to the proceeds, reversed the Moonsiff's order. A then obained an order from the Moonsiff directing B to refund the money which he did, and it was paid to A. B sued A to recover the money by establishment of his prior right to the same, and for the cancelment of the Judge's order alleging that the same was made without jurisdiction: *Held* (by a majority of the Full Bench) that the suit was one for money received by the defendant for the plaintiff's use, and was therefore governed by sch. 2 art. 60. *Held* (by the Division Bench) that A was not entitled, as the first attaching creditor, to the sale proceeds. (F. B.) I. L. R. 1 All. 333. *See also* I. L. R. 2 All. 354.

47. An application to execute a decree against the judgment-debtor's property, made more than three years after the last application for execution was not barred by — under sch. 2 art. 167, when the last application was interrupted by a successful objector against whom the decree-holder had to bring a regular suit and succeeded in obtaining a decree. The renewed application to execute within three years from the date of the decree in the said suit was not a fresh application for execution against the judgment-debtor, but a continuance or revival of the previous application interrupted by the objector. (F. B.) I. L. R. 1 All. 355.

48. In a suit for redemption of landed property, the plaintiffs, representatives of the mortgagors, relied on an acknowledgment of the mortgagor's title contained in an entry in the Settlement records of the year 1841 which was attested by the representatives of the mortgagees, defendants in the suit; and the Lower Courts having differed as to whether the acknowledgment was sufficient without proof that it was made within 60 years from the date of the original mortgage: *Held* that inasmuch as there was no limitation to suits for redemption of mortgage of landed property prior to Act XIV of 1859, it was unnecessary to ascertain whether the mortgage was effected, the acknowledgment of 1841 being an acknowledgment of a right still subsisting, and one which fulfilled the requirements of Act IX of 1871 sch. 2 art. 148. I. L. R. 1 All. 425.

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49. The Moonsiff gave plaintiffs, in a suit for possession of land and for mesne profits, a decree for possession but dismissed the claim for mesne profits. An appeal was preferred to the Judge, who affirmed the decree for possession, and remanded the case to the Moonsiff to determine the mesne profits due to the plaintiffs. The Moonsiff gave plaintiffs a decree for certain mesne profits. Subsequently a special appeal was preferred to the High Court against the Judge's decree. Whilst this was pending, an appeal was preferred to the Judge against the decree of the Moonsiff for mesne profits, and on 7th June 1873 plaintiffs again obtained a decree for mesne profits. Finally on 6th March 1874 the High Court modified the Judge's decree for possession, but did not interfere with the order of remand: *Held*, on the plaintiff's applying for execution of the Judge's decree dated 7th June 1873, that the limitation for the execution of such decree ran not from the date of such decree, but from the date of the High Court's decree, which was the "final decree of the Appellate Court" and the only "final decree" within the meaning of sch. 2 art. 167. I. L. R. 1 All. 508.

50. An application under Act VIII of 1859 s. 285, being a necessary and decided step towards the execution of a decree, was an application to enforce or keep in force a decree within the meaning of sch. 2 art. 167. I. L. R. 1 All. 525; *Ib.* 2 All. 284.

51. In a suit brought under Act XV of 1859 s. 22, for an account of profits obtained by the infringement of an exclusive privilege, the period of limitation, the taking of an account being only a mode of ascertaining the amount of damages, is the same as the period of limitation for an action for damages on the same ground, *viz.*, the period prescribed by sch. 2 art. 11. (O. J.) I. L. R. 3 Cal. 17.

52. A suit by a Hindoo excluded from joint family property, to enforce a right to a share therein, brought before the 1st October 1877, is governed by — sch. 2 art. 127, and not art. 143. I. L. R. 3 Cal. 228.

53. The words "applying to enforce the decree" in sch. 2 art. 167 mean the application (under Act VIII of 1859 s. 212 or otherwise) by which proceedings in execution are commenced, and not applications of an incidental kind made during the pendency of such proceedings. (F. B.) I. L. R. 3 Cal. 235. *See also* I. L. R. 3 Cal. 716, I. L. R. 2 Mad. 1, I. L. R. 5 Cal. 894. *See* 56 *post*.

54. In cases governed by —, a decree-holder who has applied to the Court *simpliciter* "to keep the decree in force," may, within three years from the date of such last named application, obtain execution of his decree. (F. B.) *Ib.*

55. A julkur is not an easement within the meaning of s. 27, but is an interest in immoveable property within the meaning of sch. 2 art. 145, where the defendant had been exercising a right of fishing in certain water adversely to the plaintiff for more than 12 years: *Held* that a suit by the plaintiff for a declaration that he was entitled to the exclusive right of fishing in such water was barred by limitation. I. L. R. 3 Cal. 276. *But see* I. L. R. 5 Cal. 945.

56. The "application" spoken of in sch. 2 art. 167 cl. 4 is not merely such an application as is contemplated by Act VIII of 1859, but includes an application to keep in force a decree or order. The language of art. 167 cl. 4 is wide enough to include any application to enforce or keep in force decrees or orders; and consequently an application to enforce or keep in force a decree by the attachment of a portion of the property of the defendant, will keep the decree alive against the residue of his property or his person. I. L. R. 3 Bom. 294. *See* 53 *ante*.

57. An order for attachment of a pension in satisfaction of a decree obtained on 10th December 1863, was made on 16th April 1869. After the passing of Act XXIII of 1871, the Deputy Collector refused to continue paying the pension to the decree-holder, and returned to the Court the warrant of execution issued under the order of 16th April 1869; and an order finally disposing of the application for attachment was made on 14th June 1872. On 19th June 1872 the decree-holder presented a fresh application, praying that the attachment of the pension might be continued, and a letter be written to the Collector directing him to pay the pension to the decree-holder as directed by the order of 16th April 1869; *Held* that such last-mentioned application came within sch. 2 art. 167 cl. 4, and that, consequently, an application on 24th July 1874 for execution of the decree of 10th December 1863, was not barred; also that the decree might properly be enforced against property of the defendant mentioned in the application of 1874, other than the property mentioned in the applications of 1869 and 1872. *Ib.*

58. A decree payable by instalments, with a proviso that, in default of payment of any one instalment, the whole amount of the decree shall become payable at once, is barred by sch. 2 art. 167, if application for execution be not made within three years from the date on which any one instalment fell due and was not paid. The payment of instalments subsequent to default in payment of the first instalment at the date specified, does not give the judgment-debtor a fresh starting-point. I. L. R. 2 Bom. 356. *But see* I. L. R. 2 All. 291.

59. *Held* by the Full Bench that the date on which an application for the execution of a decree is presented, and not any date on which such application may be pending, is "the date of applying" within the meaning of sch. 2 art. 167. (F. B.) I. L. R. 1 All. 580.

60. *Held* by the Division Bench that an application by the decree-holder for the stay of execution proceedings is not an application to enforce or keep in force the decree within the meaning of the same law. *Ib.*

61. Art. 167 and not art. 166 applies to an application for the execution of a decree made under Act XX of 1866 s. 53 upon a bond specially registered under s. 52. (F. B.) I. L. R. 1 All. 586.

62. Sch. 2 art. 95 was not intended to apply to suits for possession of immoveable property when fraud is merely a part of the machinery by which the defendant has kept the plaintiff out of possession. That article has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed, or do some other act, and desires to be relieved from the consequences of such act. I. L. R. 3 Cal. 504.

63. The time prescribed by Act IX of 1871 within which applications for execution may be made, govern all such applications made during the time that Act was in force. I. L. R. 3 Cal. 518. *See* I. L. R. 5 Cal. 894.

64. An acknowledgment of the title of the mortgagor or of his right of redemption signed by the mortgagee's agent is not sufficient, under sch. 2 art. 148, to create a new period of limitation. I. L. R. 1 All. 642.

65. The mere assertion of an adverse title by a mortgagee in possession does not make his possession adverse, or enable him to abbreviate the period of 60 years which sch. 2 art. 148 allows to a mortgagor to prosecute his right to redeem and seek his remedy by suit. I. L. R. 1 All. 655.

66. *Quære* whether a suit for a declaration of right to take a cupola to a certain temple and to place it upon the car of the idol, etc., was barred by sch. 2 art. 131, when the defendants by agreement had waived any right which they might have acquired against plaintiff by lapse of time. I. L. R. 2 Bom. 476.

67. On 3rd March 1875 an application was made by a decree-holder to the Court executing the decree which did not, as required by Act VIII of 1859 s. 212, state the mode in which the assistance of the Court was required, whether by the arrest and imprisonment of the judgment-debtor or the attachment of his property, but prayed that the Court would, under s. 216 of that Act, issue a notice to the judgment-debtor, to show cause why the decree should not be executed against him. Under this application, notice was issued to the judgment-debtor on 28th March 1875. On 27th April 1875 the execution-case was struck off the file on the ground that the decree-holder did not desire further proceedings to be taken: *Held* that, for the purposes of Act IX of 1871 sch. 2 art. 167, the application was one to enforce or keep in force the decree, and that limitation should be computed from the date the notice to the judgment-debtor was issued. I. L. R. 1 All. 675.

68. B's agent, under the orders of B, wrote a letter to S containing an acknowledgment in respect of a debt. This letter was headed "Written by B to S." The concluding portion of the letter was written by B in his own handwriting: *Held* that under these circumstances, there was sufficient evidence that the heading of the letter was written by an agent duly authorized; and also, looking at

LIMITATION (ACT IX OF 1871) (*continued*).

the heading of the letter, that the letter was "signed" by B within the meaning of s. 20. I. L. R. 1 All. 683.

69. A suit to declare the forgery of an instrument issued or registered or attempted to be enforced is required by sch. 2 art. 93 to be brought within three years of the date of the issue, registration, or attempted enforcement of the document, whichever may first happen; and if a document has once been used or attempted to be used, a party having notice of such use or attempted use cannot, after the expiration of three years from such use or attempted use, bring a suit to have it declared a forgery, by reason of any further attempt to make use of it. I. L. R. 4 Cal. 209.

70. In calculating the period of limitation prescribed in sch. 2 for applications as well as for suits and appeals, the day on which the order or decree appealed against was made, should be excluded. Consequently, where a person, having been dispossessed of property held by him under a mortgage, on 14th December 1875, applied on 14th January 1876 for restitution, the 13th having been a Court holiday: *Held* that his application was within the limitation of thirty days prescribed by sch. 2 art. 158. I. L. R. 2 Bom. 673.

71. Sch. 2 art. 149 only applies to cases in which some part of the principal or interest of the mortgage-debt has been paid. (O. J. Ap.) I. L. R. 4 Cal. 283.

72. *Held* that as the application for execution of a decree on 4th February 1873, being more than three years after the date of issuing the last prior notice under Act VIII of 1859 s. 216, *viz.*, 27th November 1869, was late under Act IX of 1871 sch. 2 art. 167 para. 5, execution was barred by limitation at and before the date of that application, and that this bar was not removed by the circumstance that the judgment-debtor had allowed the service of the notice on him in 1873 to pass unchallenged. I. L. R. 2 Mad. 1.

73. A obtained a decree against B on 21st June 1871, and applied for execution on 10th July following. On 2nd October of the same year property attached under such execution was sold, and the sale proceeds being paid over to A, the execution proceedings were struck off the file on 28th July 1872. On 14th May 1873 B obtained an order setting aside the sale and for refund of the sale proceeds. A thereupon, on 22nd December 1874, again applied to execute his decree: *Held* that such application was in substance one simply to continue the proceedings already set on foot by the first application for execution, and that therefore the right to execute the decree was not barred by sch. 2 art. 167. I. L. R. 4 Cal. 415.

74. The meaning of s. 10 is that, when a trust has been created expressly for some specific purpose or object, and property has become vested in a trustee upon such trust (either from such person having been originally named as trustee, or having become so subsequently by operation of law), the person or persons who for the time being may be beneficially interested in that trust may bring a suit against such trustee to enforce that trust at any distance of time without being barred by the law of limitation. The language of the section is specially framed so as to exclude implied trusts, or such trusts as the law would infer merely from the existence of particular facts or fiduciary relations. (O. J. Ap.) I. L. R. 4 Cal. 455. *See post* 84.

75. K R died in 1844 leaving a widow O T and a minor son G D. In 1847 O T executed in favor of defendant a *mourosee ijara* of certain property, but it did not appear whether she so acted as guardian or mother of G D. G D died in 1855 before attaining majority, and under an *unnoomato potro* executed by K R before his death, the plaintiff was adopted in 1858. O T died in 1861. In a suit brought by plaintiff in 1873 to set aside the alienation by O T in 1847: *Held* that, if the alienation was made by O T as guardian of G D, the suit was not barred under s. 9 (*semble* also under Act XV of 1877 sch. 2 art. 44), it having been brought within 3 years after plaintiff attained his majority; nor was it barred if made by her as a widow, the cause of action not arising until her death when the plaintiff was a minor. I. L. R. 4 Cal. 523.

76. *Quære* whether in a suit for contribution on the ground that plaintiff and defendants were jointly liable under a decree in execution of which plaintiff's property alone was sold, the limitation prescribed by sch. 2 art. 100, or that prescribed by art. 118, is applicable. I. L. R. 4 Cal. 529.

77. Plaintiff's property was ordered to be sold in execution of decree to which plaintiff was not a party. Plaintiff appeared and asked the Court to release the property from attachment, but the Court refused his application under Act VIII of 1859 s. 246, and ordered the property to be sold: *Held* that a suit to establish plaintiff's right to such property was not a suit to set aside a summary order within Act IX of 1871 sch. 2 art. 15. I. L. R. 4 Cal. 610. *But see* I. L. R. 4 Bom. 21, 611 (*post* 100).

78. A suit for the value of crops carried away by defendant while in possession under a decree for ejectment reversed in appeal, is not barred by Act XXIII of 1861 s. 11. Such a suit is a suit "for profits of immoveable property belonging to the plaintiff wrongfully received by the defendant," within the meaning of Act IX of 1871 sch. 2 art. 109, and not a suit for compensation for any wrong, malfeasance, nonfeasance, misfeasance independent of contract" within the meaning of art. 49. I. L. R. 4 Cal. 625.

79. Standing crops are immoveable property within the meaning of Act IX of 1871 (*semble* of Act XV of 1877 also). I. L. R. 4 Cal. 667.

80. In a suit brought in 1875, in which the plaintiff claimed, as heir of her husband, a share in a certain talook together with exclusive right of worship of an idol A, and the right to the worship of an idol B, for one-sixth of every year, from the possession and enjoyment of which she alleged she had been dispossessed by the defendants in 1866: *Held*, that her claim, as to the idol B, came under sch. 2 art. 131, and was not barred; but as to A, the claim was governed by art. 118 and, not having been preferred within six years, was barred by lapse of time. I. L. R. 4 Cal. 683.

81. An acknowledgment in writing of a debt by a judgment-debtor is not such an acknowledgment as is contemplated by s. 20, and will not, therefore, operate to extend the period of — in favor of the judgment-creditor. The "debt" referred to in that section is not a judgment-debt, but a liability to pay money for which a suit can be brought. I. L. R. 4 Cal. 708. *See also* 21 *ante*. *See* I. L. R. 5 Cal. 894.

82. Under Act VIII of 1865 (Bengal) s. 16, under tenures become void *ipso facto* by the sale, and are not merely voidable at the option of the purchaser. The interpretation which should be put on the word "avoid" in sch. 2 arts. 119 and 120, is "to do something in exercise of the right of avoidance." I. L. R. 4 Cal. 860.

83. A, a judgment-debtor, being arrested in execution of a decree, applied in the year 1873 under Act VIII of 1859 s. 273 for his discharge. The Court refused to entertain the application except on condition that A should pay into Court a certain fixed sum of money per month on behalf of the judgment-creditor. A, accepting these terms, was thereupon discharged, and the execution-proceedings struck off the file. A, in compliance with the directions of the Court, made regular payments into Court until October 1876 when he discontinued payment: *Held* on an application made in June 1877 by the judgment-creditor for a warrant of further arrest against A, that, inasmuch as the decree-holder was not seeking to enforce by means of execution the arrangement made by the Court in 1873 but was rather attempting to execute the original decree, such application was barred under sch. 2 art. 167, more than three years having elapsed since the date of the last application for execution of such decree. I. L. R. 4 Cal. 877.

84. *Per* Garth, *C. J.* The words "in trust for a specific purpose" in s. 10 are intended to apply to trusts created for some defined or particular purpose or object, as distinguished from trusts of a general nature such as the law impresses upon executors and others who hold recognized fiduciary positions. *Per* White, *J.* The words "in trust for a specific purpose" are used in a restrictive sense, and limit the character and nature of the trust attaching to the property which is sought to be followed. The phrase is a compendious form of expression for trusts of the nature and character mentioned in sch. 2 arts. 133 and 134, *viz.* such as attach to property conveyed in trust, deposited, pawned, or mortgaged. (O. J. Ap.) I. L. R. 4 Cal. 897. *See* 74 *ante*.

85. The plaintiff's father obtained a decree in the Court

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of the Agent for Sirdars in 1848 against the defendant's grandfather, a third class Sirdar. The decree gave an option to the Sirdar to pay up the debt at once, or year by year, out of the revenues of a village. The Sirdar chose the latter alternative, and execution proceeded accordingly on that footing till his death in 1862. His son survived him and died in 1867, when the defendant, who was not himself a Sirdar, succeeded. The Subordinate Judge of Khed (to whom, on the cessation of the Sirdarship in the defendant's family, the Agent referred the decree for further execution) proceeded with the execution up to the year 1876, when these proceedings were pronounced to be irregular. The plaintiff thereupon in the year 1877 filed the present suit based on the decree of 1848: *Held* that the period of limitation applicable under sch. 2 art. 121 was that of twelve years from the date of the decree, but that the decree should be viewed as analogous to an instalment decree and made as against the defendant in 1867 (down to which time the proceeds were regularly realized) because it then on his father's death became first operative against him. I. L. R. 3 Bom. 193.

86. In the case of a decree payable by instalments, as the command of the Judge prescribes a term for the performance of the several parts of his order, it is to be construed as becoming a judgment for purposes of — as to each instalment only on the day when payment is to be made. *Ib.*

87. The defendant at different times made payments to the plaintiff, who was his creditor, in reduction of the general balance of account against him, but without intimating that any of such payments was to be appropriated in satisfaction of the interest due on his debt: *Held* that there had been no payment of interest "*as such*" by the defendant so as to bring the case within s. 21 cl. 1, and that the plaintiff's claim was barred; also that an entry of an account stated made by the defendant in the plaintiff's books was not a contract in writing within the meaning of the proviso to s. 21, and that, consequently, the payments made by the defendant on account were not such payments of the principal of the debt due by him as would bar the operation of the Act. I. L. R. 3 Bom. 198.

88. In suits for maintenance coming within the operation of the — a Hindoo widow may recover arrears for any period, unless it appears that there has been a demand and refusal, in which case she can recover arrears for twelve years only from the date of such demand and refusal. I. L. R. 3 Bom. 207.

89. The words "where there has been an appeal" in sch. 2 art. 167 cl. 2 contemplate and mean an appeal from the decree, and do not include an appeal from an order dismissing an application to set aside a decree under Act VIII of 1859 s. 119. I. L. R. 2 All. 273.

90. The period of limitation prescribed for a suit for foreclosure by the above Act is either 12 years under sch. 2 art. 132, or 60 years under art. 149. I. L. R. 3 Bom. 312.

91. An order made *ex-parte* under s. 5 cl. *b*, permitting an appeal to be registered although filed beyond time, may, on proper cause being shown, be set aside by the Court which made it; but such an order made by a District Judge cannot be afterwards cancelled by a Subordinate Judge upon the appeal coming on for hearing before him. I. L. R. 5 Cal. 1.

92. Defendant executed a bond which provided that interest should be payable monthly, and that the principal should become due within six months from the date of execution. The bond contained a clause to the effect that, if the interest should not be paid according to the terms of the bond, or if the creditor should feel any doubts as to his being able to realize the principal, he should not be bound to wait until the expiry of the six months in order to bring his suit, but should be at liberty to realize the principal and interest in any manner he might choose: *Held* that a suit on the bond brought within three years from the date of the day specified therein for payment was not barred by limitation, as the case fell under sch. 2 art. 65 and not under art. 75. I. L. R. 5 Cal. 21.

93. In a suit for the specific performance of an agreement entered into in 1858, to grant a pottah when required, it appeared that the plaintiffs applied to the defendants for a pottah in 1874, and in March 1875 the defendants finally refused to make the grant, and the plaintiffs thereupon instituted their suit for specific performance: *Held* that they were not barred by limitation, as under sch. 2 art. 113, they had three years within which to bring their suit, from the time when they had notice that their right was denied. I. L. R. 5 Cal. 175.

94. Although, under Act VIII of 1871 s. 49, no instrument which is "required by s. 17 to be registered shall if unregistered be received as evidence of any transaction affecting the property to which it relates," this provision does not prevent such an instrument being used for the purpose of showing that a fresh period of limitation has been acquired under Act IX of 1871 s. 20 cl. (*c*) by an acknowledgment of a debt in writing signed by the party to be charged therewith, before the expiration of the prescribed period of limitation. I. L. R. 5 Cal. 215.

95. In 1867 plaintiff, who was then living jointly with defendant, who was his brother, executed a bond to secure the repayment of moneys advanced to him, which moneys were applied by him for the joint benefit of himself and the defendant. In 1868 plaintiff executed another bond for the same purpose. In 1870 plaintiff and defendant separated, and the lender thereupon sued plaintiff upon the bond executed in 1867, and obtained a decree. In 1874 plaintiff executed a fresh bond in favor of the decree-holder, in order to avoid execution of the decree and to retire the bond of 1868. In 1877 (within three years from the date of the fresh bond) plaintiff sued his brother to recover a moiety of the sum secured thereby: *Held* that the date upon which money was paid by plaintiff for defendant must have been before 1870, and that therefore the suit was barred by — sch. 2 art. 59. I. L. R. 5 Cal. 321.

96. A Hindoo family being heavily oppressed with debts, ancestral and otherwise, the two elder brothers of the family, for themselves and as guardians of their minor brother, under Act XL of 1858, applied to and obtained from the District Judge an order, under s. 18 of the Act, for the sale of several portions of the ancestral estate, and sold the same under registered deeds signed by the Judge. Within twelve years after the registration, the adopted son of the minor brother brought several suits against the purchasers to set aside the sale and recover back his share of the property, alleging that the two elder brothers had made the sale fraudulently and illegally to satisfy personal debts of their own: *Held* that a suit of this nature is not a suit "to set aside an order of a Civil Court" under Act IX of 1871 sch. 2 art. 15; nor is it a suit "to cancel or set aside an instrument not otherwise provided for" under art. 92, but that it is governed by art. 145. I. L. R. 5 Cal. 363.

97. Where the heirs of a deceased Hindoo sued to recover possession of certain mouzahs granted in *mokurruree* to the defendants by the widow of the deceased, and were not aware that part of the lands comprised in the mouzahs had been taken by Government, and that the compensation-money had been lodged in the Collectorate; and afterwards sued to recover the compensation-money wrongfully drawn out of the Collectorate by the defendants: *Held* that sch. 2 art. 118, and not art. 60, applied to the case. I. L. R. 5 Cal. 597.

98. Where the account between A and B was not, and never had been, a mutual, open, and current account: *Held* that the suit by B against A was barred by limitation, and that the payments made by B on behalf of A within the period of limitation, even if authorised, did not have the effect of keeping alive his previous claim against her; and that, even if the dealings and transactions between A and B could be so construed as to show that there had been at any time a mutual, open, and current account between them, that mutual relation terminated on the date when the last payment was made on A's account into B's bank. I. L. R. 5 Cal. 759.

99. On 9th October 1875, the book containing the accounts between plaintiff and defendant, kept by the plaintiff, was examined by the parties, and a balance was struck in plaintiff's favor, which was orally approved and admitted by the defendant. On 2nd April 1877, plaintiff sued defendant for the amount of this balance "on the basis of the account book": *Held* that the suit was in effect one on accounts stated falling within sch. 2 art. 62, and could be brought within three years from 9th October 1875 for the total balance struck, and being so brought was within time. I. L. R. 2 All. 641.

100. The intention of the Legislature in passing Act VIII

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of 1859 s. 246 was that the order made under that section should be a final bar to the plaintiff's right, unless such a suit as that section prescribed was brought to re-try the question of that right; and if, on such action being brought, the Court on the trial held that the plaintiff had established his right, its ruling would amount to a reversal of the order made under s. 246, and the suit would fall within Act IX of 1871 sch. 2 art. 15, which is substituted for the limitation provided by the twelve repealed words in Act VIII of 1859 s. 246. I. L. R. 4 Bom. 611.

101. The mere acceptance by the obligee of a bond payable by instalments, which provides that in case of failure to pay one or more instalments the whole amount of the bond due shall become payable, of instalments after default does not constitute a "waiver," within the meaning of sch. 2 art. 75, of the obligee's right to enforce such provision. In the case of such a bond the cause of action arises on the first default, and limitation runs from the date of such default. I. L. R. 2 All. 857.

102. Sch. 2 art. 127 pre-supposes the existence of joint family property, and that there has been an exclusion from participation in the enjoyment of such property. *Semble.* The word "excluded" in that article implies previous inclusion. I. L. R. 5 Cal. 938.

103. The right of a Hindoo to the possession of immoveable property on the death of a Hindoo widow, to which sch. 2 art. 142 refers, must be one *in esse* at the time of the death of the widow. The determination, therefore, of such right during her lifetime, extinguishes also the right of the reversioner on her death. *Ib.*

104. The period of limitation prescribed by sch. 2 art. 15, for a suit to set aside an order of a Civil Court, does not apply where the order simply amounts to a declaration that the Court considers it has no jurisdiction to act in the proceeding before it. I. L. R. 6 Cal. 142.

105. The period of limitation within which application must be made for execution of an order for costs passed by the High Court when rejecting a petition for leave to appeal to the Privy Council, is that specified in Act IX of 1871 sch. 2 art. 167 (corresponding with Act XV of 1877 sch. 2 art. 179). I. L. R. 6 Cal. 201.

106. Acknowledgments which under Act XIV of 1859 were insufficient to keep alive a cause of action because they were signed only by an agent: *Held* to be sufficient to sustain a suit on the same cause of action under Act IX of 1871. I. L. R. 6 Cal. 340.

107. Where a series of acknowledgments of a debt have been made, each within three years of the one next preceding, and the first of the series has been made within three years of the date on which the debt was contracted, a suit for the recovery thereof is, under Act IX of 1871, in time, if instituted within three years from the date of the last acknowledgment. *Ib.*

108. Discussion as to who is an authorised agent, what is a sufficient signature, and what amounts to a sufficient acknowledgment, within the meaning of s. 20. *Ib.*

109. Under s. 20, the authorised agent may sign either his own name or that of his principal. *Ib.*

110. Plaintiff, in 1876, filed a suit to establish his right to and to recover a fourth share of certain property which he alleged to be ancestral. He stated his cause of action to have accrued on 17th May 1871, on which day he had been dispossessed by an order by the Mamlutdar, made under Act V of 1864 (Bombay). The District Court held that the suit was barred by — sch. 2 art. 46: *Held* by the High Court, on special appeal, that art. 46 did not apply, and that the suit was not barred. I. L. R. 5 Bom. 25.

111. Sch. 2 art. 46 is not applicable to a partition suit, I. L. R. 5 Bom. 27.

See **Co-Sharers 11.**
Execution of Decree 9.
Hoondee 3, 8.
Limitation 16, 32, 41, 42.
" (Act XIV of 1859) 21, 23, 28.
Pauper Suit or Appeal 2.
Sale (for Arrears of Revenue) 5.

Limitation (Act XV of 1877).

1. *Quære* whether, in computing the period of limitation prescribed by sch. 2 art. 177, for an application for leave to appeal to the Privy Council, the time requisite for obtaining a copy of the judgment on which the decree against which leave to appeal is sought is founded, should be excluded under s. 12. I. L. R. 1 All. 644.

2. *Semble.* Sch. 2 art. 75 does not apply, according to its strict terms, to a suit brought upon a verbal contract. I. L. R. 3 Cal. 619.

3. S. 28 extends the doctrine that 12 years' adverse possession of land not only bars the remedy of the rightful owner, but extinguishes his right, to property other than land. But *quære* whether this principle would apply to debts. (O. J. Ap.) I. L. R. 4 Cal. 283.

4. On 19th December 1876, A gave T a mortgage of his share in a certain village. The terms of the mortgage were that A should remain in possession of his share, and pay the interest on the mortgage money annually to the mortgagee, who, in the event of default in payment of the interest, was empowered to sue for actual possession of the share. On 19th May 1877, T's name was substituted for that of A in the proprietary registers in respect of the share. On 8th February 1878, G sued T and A to enforce his right of pre-emption in respect of the share, alleging that his cause of action arose on 19th May 1877, and that A, notwithstanding the mutation of names, was still in possession. T alleged that he had been in possession since the execution and registration of the deed of mortgage: *Held* that whether T had been in plenary possession of the share since the date of the deed, or whether he had had only such constructive or partial possession of it as was involved in the receipt of interest on the mortgage money, the plaintiff was equally bound to have sued within a year from the date of the deed, and was not entitled to reckon the year from the date on which the possession by the mortgagee of the share was recognized by the Revenue Department, and the suit was therefore barred by sch. 2 art. 10. I. L. R. 2 All. 237.

5. Sch. 2 art. 171 of the above Act, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under Act X of 1877 s. 363 or s. 365, does not apply to the representative of a deceased judgment-debtor claiming admission to continue execution proceedings commenced by him. Act X of 1877 does not provide that applications for execution shall, like suits, abate by the death of the judgment-creditor. Such a representative may, therefore, come in at any time, as his coming in is contemplated in sch. 2 art. 179 expl. 1 of Act XV of 1877, subject always to the same conditions as would apply to his principal. I. L. R. 3 Bom. 221.

6. The non-production of the Collector's certificate under Act XXIII of 1871 s. 6 does not necessarily constitute such a want of due diligence on the plaintiff's part as to entitle him to the deduction of time allowed by s. 14. I. L. R. 3 Bom. 223.

7. B and S executed a bond dated 15th August 1874 in favor of plaintiff in consideration of a loan of Rs. 15,000, agreeing to repay the same within three years from the above date, and covenanting to pay every half year interest on the same, at the rate of 8 per cent. per annum; and also to pay the premia on certain policies of insurance made over to plaintiff by way of collateral security. In the event of failure in payment on due date of interest and premia, the obligors made themselves liable to pay the full amount of the bond debt. The bond also contained the stipulation that it should be optional with the obligee to claim and if necessary to sue for the full amount of the bond on the failure of any one or more stipulated payment, or on the full expiry of the period of three years: *Held* that the bond was not an instalment bond, and therefore sch. 2 art. 75 was inapplicable; so also arts. 67 and 68. I. L. R. 2 All. 322.

8. *Quære* whether limitation commenced after the expiration of the three years allowed by the bond for payment of the debt, or whether sch. 2 art. 80 applied to the suit, and limitation ran from the date when the bond became due. *Ib.*

9. C, the proprietor of a certain "mohalla," sued K, who had purchased a house situated in the mohalla at a sale in the execution of his own decree, for one-fourth of the purchase-money, founding his claim upon an auction

LIMITATION (ACT XV OF 1877) (*continued*).

custom obtaining in the mohalla, under which the proprietor thereof received one-fourth of the purchase-money of a house situated therein, whether sold privately or in the execution of a decree: *Held* that the period of — applicable to such a suit was that prescribed by sch. 2 art. 120, and not by art. 62 or by art. 132 of that schedule. I. L. R. 2 All. 358.

10. A obtained a money decree against B on 25th January 1872, in execution of which property belonging to B was sold on 9th September 1874, A himself becoming the purchaser. The sale was confirmed on 9th October 1874, but the certificate of sale was not issued till 23rd January 1878. A applied for possession on 2nd April 1879: *Held* that the right to apply for possession contemplated in Act VIII of 1859 ss. 263 and 264 (corresponding with Act X of 1877 ss. 318 and 319) accrued on the date the certificate of sale was issued, and not on that on which the sale was confirmed, and that, therefore, the period of limitation under Act XV of 1877 sch. 2 art. 178 against the purchaser counted from the former date. I. L. R. 3 Bom. 433.

11. The period of limitation prescribed by Act XV of 1877 sch. 2 art. 73 is a "shorter period of limitation" within the meaning of the last clause of s. 2 of that Act than the period prescribed by Act IX of 1871 sch. 2 art. 72. I. L. R. 2 Mad. 113.

12. The language of Acts IX of 1871 and XV of 1877 leads to the conclusion that by each of these enactments the starting-point and period given in its schedule were to take the place of those given by the Act which preceded it, in the case of all suits instituted after the date of the Act coming into force, and that the expiration of the period, calculated with reference to the Act in force at the date at which the promissory note was executed, does not necessarily affect the remedy. *Ib.*

The above Acts merely bar the remedy, but do not extinguish the debt. I. L. R. 5 Cal. 897, *Ib.* 6 Cal. 340.

13. When a debt is made payable by instalments, with a proviso that, on default of payment of any one instalment, the whole debt, or so much of it as may then remain unpaid, shall become due, limitation runs, under Act IX of 1871 or Act XV of 1877, from the time of the first default. A subsequent acceptance of the instalment in arrear operates as a waiver, and suspends the operation of the law of limitation; but merely allowing the default to pass unnoticed does not. I. L. R. 5 Cal. 97. *See also* I. L. R. 1 Bom. 125; *Ib.* 2 Bom. 356; *Ib.* 4 Bom. 96.

14. Though by Act XV of 1877 s. 6, nothing in that Act affects the period of limitation prescribed by any special or local law for any suit, appeal, or application, still the rules prescribed by that Act for computing the period of limitation are applicable to such suit, appeal, or application. Act IX of 1871 s. 6 contrasted with Act XV of 1877 s. 6. I. L. R. 5 Cal. 110.

15. *Held* in a suit for pre-emption, where the property had been purchased by the mortgagee in possession, that the purchaser obtained physical possession of the property under the sale, not from the date of the sale-deed, but when the contract of sale became completed; and therefore that, the contract of sale having become completed on the payment of the purchase-money, the suit being brought within one year from the date of such payment, was within time under sch. 2 art. 10. I. L. R. 2 All. 409.

16. The defendant executed on 20th April 1875 a bond to the plaintiff, who, without making a demand for his money, filed a suit upon it on 21st June 1878: *Held* that under s. 2 the suit was not barred, although more than three years had expired since the date of the bond. I. L. R. 4 Bom. 87.

17. Where a bond bears a native date only, and is made payable after a certain time, that time, whether denoted by the month or the year, is to be computed according to the Gregorian [British] calendar, with reference to Act XV of 1877 s. 25. I. L. R. 4 Bom. 103.

18. Notwithstanding the general provisions of s. 19, by which a new period of limitation, according to the nature of the original liability, is allowed, provided that the acknowledgment of liability is made in writing before the expiration of the period prescribed for the suit, a suit cannot be brought upon an acknowledgment or account stated, signed by a person who has been agent to collect rents, if his signature were not procured till more than a year after the determination of his agency. I. L. R. 5 Cal. 303.

19. Although a suit to recover moneys or obtain papers or accounts from an agent must, under Act VIII of 1869 (Bengal) s. 30, be instituted within one year from the determination of the agency, yet if, on the last day of such year the Courts be closed, the suit will, under Act XV of 1877 s. 5, not be barred if filed on the first day of the re-opening of the Court. I. L. R. 5 Cal. 317.

20. Act IX of 1871 s. 6, and Act XV of 1877 s. 6 compared. *Ib.*

21. Symbolical possession (such as may be given by the Nazir of a Court by sticking a bamboo into the ground, or the like) of a dwelling-house, or of a share in a dwelling-house of which actual possession might have been granted, is not such a *bonâ fide* possession as will save limitation. I. L. R. 5 Cal. 331.

22. A purchaser of immoveable property, sold in execution of a decree, must, under sch. 2 art. 165, if obstructed or resisted in endeavouring to obtain possession, apply, within thirty days, to the Court under the directions of which the execution-sale was held to be put into actual possession; and if he omits to do so within thirty days from the time when his taking possession was first obstructed or resisted, his only remedy is by a Civil suit. *Ib.*

23. The plaintiffs, on 31st January 1863, purchased a half share in a certain house at a sale in execution of a decree, but took no steps at the time to take possession of it. In 1869, the Nazir of the Court was directed to put them into possession, and gave them symbolical possession. Afterwards, in 1871, plaintiffs, again with the assistance of the Nazir, entered upon, and for the space of about a minute remained in, possession of one of the rooms in the house, until they were turned out by the defendants. On 18th November 1876, plaintiffs filed a suit, praying for a declaration of right, and for a partition, and to be put into separate possession of the share that might be allotted to them on such partition: *Held* that neither the symbolical possession given to them in 1869 by the Nazir, nor the momentary and partial possession which they had obtained in 1871, was sufficient to save limitation; and that, as their suit was brought on 18th November 1876, more than twelve years after 31st January 1863, when they first became entitled to possession, it was now barred by limitation. *Ib.*

24. *Held*, in the case of a decree for money payable by instalments, with a proviso that in the event of default the decree should be executed for the whole amount, that the decree-holder was strictly bound by the terms of the decree; and not having applied for execution within three years from the date of the first default, the decree was barred. I. L. R. 2 All. 443.

25. *Held* also, the judgment-debtor having, three years after the first default, acknowledged in writing his liability under the decree, and signed such acknowledgment, that, the decree being already barred, such acknowledgment did not create a new period of limitation under s. 19. *Ib.*

26. A, the judgment-debtor, opposed an application made by B, the judgment-creditor, for execution under a decree. This objection was overruled on 17th January 1876. The appeal by A from this order (B being represented and opposing A's appeal at the hearing) was dismissed on 2nd October 1877: *Held*, on a second application for execution made by B on 18th March 1879, that such application was barred under sch. 2 art. 179. I. L. R. 5 Cal. 595.

27. In a suit to recover possession of a house, the plaintiffs alleged that their predecessors in title had permitted A, the father of the defendants, to occupy the house in question without paying any rent for it, and that since A's death, which took place about twenty years before the institution of the suit, the defendants had been permitted to reside therein without paying rent. The defendants contended that plaintiff's predecessor in title had made a gift of the house to A; that he had remained in possession of it until his death; and that since then they had been in possession of the house by virtue of the gift: *Held* that the suit was barred under sch. 2 art. 142. I. L. R. 5 Cal. 679.

28. The meaning of art. 142 is that, where there has been possession followed by a discontinuance of possession, time runs from the moment of its discontinuance, whether there has or has not been any adverse possession, and without

LIMITATION (ACT XV OF 1877) (*continued*).

regard to the intention with which, or the circumstances under which, possession was discontinued. *Ib.*

29. Arts. 139, 142, and 144 considered. *Ib.*

30. In 1857 A died, leaving a son, the plaintiff B, and the defendants C and D, his widows, him surviving. C took possession of all A's property. The plaintiff B was son of D, and shortly after A's death, D gave birth to another son, the plaintiff E. In 1865 D instituted a suit against C, B, and E, alleging that A had left a will. In this suit, C claimed to be the heiress of A. No decree was made in the suit, which was compromised. In November 1877 B and E entered into possession of a shop, which had belonged to their father, and which had been managed, during their minority, by the defendant C. In 1879, the plaintiffs instituted the present suit, claiming to recover from C the property of A come to her hands: *Held* that so far as the immoveable property was concerned, the case fell under sch. 2 art. 120 or 144; and as to the moveable property, under art. 89 or 90. (O. J.) I. L. R. 5 Cal. 692.

31. S. 22 does not apply to a case in which the person to whom a right of suit is assigned after the institution of the suit, obtains leave to carry on the suit. I. L. R. 5 Cal. 721.

32. Where a party was prosecuting his suit in a Court which had jurisdiction, and the inability of that Court to entertain it did not arise from defect of jurisdiction or any cause of the like nature, but from misjoinder of plaintiffs, a defect for which he must be held responsible: *Held* that for the period so occupied he was not prosecuting his suit in any Court, and could not claim to have that period excluded under s. 14. I. L. R. 2 All. 622.

33. In 1864 a lease of a house was granted to A for a term of ten years. The lease contained a covenant to repair. A died, and B, his administrator, assigned the lease to another, and it ultimately became vested in the plaintiff. In 1872 the plaintiff assigned the lease to the defendants "under and subject to the covenants" therein contained. The defendants failed to repair; and after the term had expired, C, the representative of the lessor, sued B for arrears of rent and damages for non-repair. B defended the suit, but C obtained a decree against him for Rs. 6,167-3 and costs, amounting in all to Rs. 8,328-3. In 1877 B sued plaintiff for the amount which he had been compelled to pay C, and for the amount of his own costs. Plaintiff gave notice to the defendants to intervene and defend if they desired; but they did not reply, and plaintiff consented to a decree for Rs. 6,932-12-11 with costs. Thereupon plaintiff instituted the present suit to recover from defendants the sum recovered from him by B, together with his own costs of defence: *Held* that the suit was not barred under sch. 2 art. 83, as the time when the plaintiff was actually damnified was when B recovered against him. (O. J.) I. L. R. 5 Cal. 811.

34. On 27th October 1865 the vendor of certain immoveable property executed a conveyance of such property to the purchasers. On that date the vendor was not in possession of the property, although his title to it had been adjudged by a decree against which an appeal was pending. The conveyance did not contain any express promise or undertaking on the vendor's part to put the purchasers into possession. On 24th February 1870 the vendor obtained possession of the larger portion of the property, and on 23rd August 1872 of the remainder. On 5th October 1877, the purchasers sued the vendor for the possession of the property, stating that "possession was agreed to be delivered on the receipt of possession by the vendor," and that the cause of action was that the vendor had not put them into possession: *Held* that the suit was not one for the specific performance of a contract to deliver possession to which sch. 2 art. 113 was applicable, but one to obtain possession in virtue of the right and title conveyed to the purchasers to which either art. 136 or art. 144 of sch. 2, was applicable, and that, whichever of them was applicable, the suit was within time. I. L. R. 2 All. 718.

35. The words "appeal" and "Appellate Court" in sch. 2 art. 179 include an appeal to the Privy Council. Where, therefore, an appeal had been preferred to the Privy Council from a decree of the High Court dated 18th August 1871, and the High Court's decree was affirmed by an order of Her Majesty in Council dated 12th August 1876, and an application for execution of the High Court's decree was made on 15th July 1879: *Held* that, under art. 179, the limitation of such application must be computed from the date of the order of Her Majesty in Council. I. L. R. 2 All. 763.

36. The period of limitation for a suit to recover money deposited by the plaintiff with the defendant, upon the understanding that it will be returned in a certain event, should be calculated not under sch. 2 art. 115, but under art. 62. Such period begins to run on the happening of the event. I. L. R. 5 Cal. 830.

37. No process can legally issue upon an application for the execution of a decree barred by limitation, nor can an application made under such circumstances be a valid application, or one which, under the Act, would give the execution-creditor a fresh period of limitation. Unless it can be shown that such was the express intention of the Legislature, none of the provisions of Act XV of 1877 can be made applicable to any matter which, at the time when such Act came into force, had already become barred by the operation of Act IX of 1871. I. L. R. 5 Cal. 894.

38. The words "nothing herein shall be deemed to revive any right to sue" in s. 2 should be used in their widest signification, and will include any application invoking the aid of the Court for the purpose of satisfying a demand. Where, therefore, a judgment-creditor sought on 25th September 1877 to execute a decree passed on 27th May 1874 (which decree, at the time of the application for execution, was barred by Act IX of 1871 sch. 2 art. 167) on the ground that he was entitled to take advantage of Act XV of 1877 sch. 2 art. 179, which was more favorable to him: *Held* that, under the wording of s. 2 of the latter Act, he was not entitled to do so. I. L. R. 5 Cal. 897.

39. A alleged that his father B had, before his death, placed in the hands of C a certain sum of money, and had also transferred to C his landed property upon trust that C should, during the minority of A, hold the money and manage the property for the benefit of A, and maintain A, and should, on A's attaining his majority, make over to him the property and so much of the money as should then be unexpended; and that C had accepted the trust, but, upon A's coming of age, had refused to render any account. A accordingly brought a suit for an account. C pleaded that A had attained his majority at a much earlier period than he alleged, and that the suit was barred by limitation. A replied that, under s. 10, his suit could not be barred by any length of time: *Held* that s. 10 did not apply to such a case, and that A's suit would be barred if not brought within 6 years from the time when he attained his majority, and became entitled to demand an account. I. L. R. 5 Cal. 910.

40. In India, suits between a *cestui que trust* and a trustee for an account are governed solely by the —; and unless they fall within the exemption of s. 10 are liable to become barred by some one or other of the articles in sch. 2 of the Act. To claim the benefit of s. 10, a suit against a trustee must be for the purpose of following the trust-property in his hands. If the object of the suit is not to recover any property *in specie*, but to have an account of the defendant's stewardship, which means an account of the moneys received and disbursed by the defendant on plaintiff's behalf, and to be paid any balance which may be found due to him upon taking the account, it must be brought within six years from the time when the plaintiff had first a right to demand it. *Ib.*

41. Malikhana is an annual recurring charge on immoveable property, and may be sued for under sch. 2 art. 132, within twelve years from the time when the money sued for becomes due. I. L. R. 5 Cal. 921.

42. The word "easement" as used in — has by force of the interpretation clause (s. 3) a very much more extensive meaning than the word bears in the English law, for it includes any right not arising from contract by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing on, or attached to, or subsisting upon the land of another. An easement, therefore, under the Indian law, embraces what in English law is called a *profit à prendre*, *i.e.* a right to enjoy a profit out of the land of another. I. L. R. 5 Cal. 945.

43. A prescriptive right of fishery is an "easement" as defined by s. 3 of the Act, and may be claimed by any one

LIMITATION (ACT XV OF 1877) (*continued*).

who can prove an "user" of it, *i.e.*, that he has of right claimed and enjoyed it without interruption for a period of twenty years; although he does not allege, and cannot prove, that he is, or was, in the possession, enjoyment, or occupation of any dominant tenement. *Ib.*

44. Plaintiff sued defendant for money due upon accounts stated between them in December 1874 when Act IX of 1871 was in force. Such accounts were not signed by the defendant. The suit was instituted after Act XV of 1877, which repealed Act IX of 1871, had come into force: *Held* that the plaintiff's right to sue upon such accounts within three years from the date the same were stated was not a "title" acquired under Act IX of 1871, within the meaning of Act XV of 1877 s. 2 which, under the provisions of that section, was not affected by the repeal of Act IX of 1871, and the suit was not governed by the provisions of Act IX of 1871, but by those of Act XV of 1877; and that, therefore, the accounts not being signed by the defendant, the plaintiff could not claim the benefit of sch. 2 art. 64 of the latter Act, but must be regarded as suing merely for money lent. I. L. R. 2 All. 872.

45. The defendant took certain land from the plaintiff under a registered lease, which contained a clause prohibiting the defendant from digging a tank on the land without the plaintiff's permission. The defendant having, nevertheless, constructed a tank without such permission, the plaintiff brought a suit to compel him to fill up the tank, or, in case he should fail to do so, for compensation: *Held* that the period of limitation applicable to such a suit was prescribed in sch. 2 art. 120. I. L. R. 6 Cal. 34.

46. After a decree had been made in a suit, the case was, in 1875, struck out of the board for want of prosecution. No steps were taken to have it restored. In 1879 both the plaintiff and defendant died. In the same year the heirs of the plaintiff instituted a suit against the administrator of the defendant for the purpose of having the decree in the original suit carried out. This suit was dismissed by the Court of first instance under Act X of 1877 s. 13, but the Appellate Court, holding that the original suit was subsisting and might be reconstituted, directed that the plaintiffs should be allowed to amend their plaint by putting it into the form of a petition under s. 372 of the same Act. On a petition by the plaintiffs praying that the original suit might be revived and restored to the board: *Held* that the application was not barred under sch. 2 art. 178. Even if art. 178 was applicable, the application would not be barred, limitation running from the time when the suit was allowed to be reconstituted. (O. J.) I. L. R. 6 Cal. 60.

47. The Legislature did not intend to include in the Limitation Act every application to a Court with reference to its own list of causes, such as applications to transfer a case from one board to another, to transfer a case to the bottom of the board, change of attorneys, and so forth. (O. J.) *Ib.*

48. A suit to recover money due upon a registered bond is a suit for compensation for breach of contract in writing registered, within the meaning of sch. 2 art. 116, and must be brought within six years from the time when the period of limitation would begin to run against a suit brought on a contract not registered. I. L. R. 6 Cal. 94.

49. In a suit for possession of land brought by A against B, C, and D, a decree was passed on 14th April 1874 for possession and costs against B, C, and D jointly. This decree was afterwards reversed on an appeal by B, who alone claimed the property. A then preferred a special appeal to the High Court, and on 29th June 1877 the decision of the Judge was reversed, and the decree of the Court of first instance restored. On 30th December 1878, A applied to the Court of first instance for execution to issue against C and D for the costs specified in the decree passed on 14th April 1874. C and D successfully objected in the Court of first instance and the lower Appellate Court, that more than three years having elapsed since the date of the decree, the decree for costs could not be executed, the application for execution being barred by sch. 2 art. 179: *Held* on appeal to the High Court, that, inasmuch as B's appeal had related to the whole case, and the decree obtained by him dismissing the suit would, if not reversed, have deprived A of his right to any costs at all, A, upon succeeding in getting the original decree restored upon special appeal to the High Court, was entitled to execute such restored decree at any time within three years of the order of the High Court. I. L. R. 6 Cal. 194.

50. Where a bond, by its terms, stated that money advanced should be repaid on the 30th Pons 1283 B. S., and it so happened that, in the year 1283, the month of Pons consisted only of twenty-nine days (the 29th Pons answering to the 12th January 1877): *Held* that a suit brought on 13th January 1880 was in time. I. L. R. 6 Cal. 239.

51. A suit for the recovery of immoveable property against a person who had originally been in mere permissive occupation or possession accorded on the ground of charity or relationship, is governed by sch. 2 art. 144 and not by art. 142. In such a case the owner of the property, who has accorded the permissive occupation, cannot be said to have "discontinued" the possession. (O. J. Ap.) I. L. R. 6 Cal. 311.

52. Where an application for execution has been made and granted, but the right to execute has been subsequently suspended by an injunction or other obstacle, the decree-holder may apply for a revival of the proceedings within three years from the date on which the right to apply accrues, *i.e.*, the date on which the injunction or other obstacle is removed (sch. 2 art. 178). I. L. R. 5 Bom. 29.

53. Where a decree-holder, whose right of execution has been thus temporarily suspended, dies, his representative has the same rights as he had himself to apply for and obtain a revival of the proceedings. *Ib.*

54. Where an injunction obtained against the execution of a decree has been dissolved, the time during which it was in force cannot be deducted under s. 15 in computing the period of limitation within which an application for execution may be made. S. 15 only relates to injunctions which stay the institution of suits, and the word "suit" does not include an application (s. 3). *Ib.*

55. In such a case, the right of the representative to apply for the entry of his name in the place of that of the deceased decree-holder cannot be regarded to have accrued immediately on the death of the deceased, because at that time the deceased's application for execution, being suspended by the injunction, was to all intents and purposes non-existent, and could not be revived until the injunction was removed. *Ib.*

See Limitation (Act XIV of 1859) 21.
,, (Act IX of 1871) 75, 79.
Municipal 13.
Plaint 13.
Practice (Appeal) 19.

Limitation (Reg. III of 1793 s. 14).

1. Meaning of "clear and positive proof" as used in this section. (P. C.) 2 P. C. R. 261 (12 W. R. P. C. 36; 3 B. L. R. P. C. 37; 13 Moo. 37).

Limitation (Reg. II of 1805).

1. The right of Government to institute proceedings, under Regs. II of 1819 and III of 1828, for resumption of lands, is barred by — under s. 2 cl. 2. (P. C.) 2 P. C. R. 8 (4 Moo. 466).

2. The — under s. 3 must be strictly applied, and the alleged fraudulent or forcible dispossession clearly established. (P. C.) 3 P. C. R. 27 (22 W. R. 165).

Lingayat Caste.

1. Lingayats are members of the Soodra, and not of the Vaishya, class. I. L. R. 3 Bom. 273.

See Hereditary Office 4, 5.
Res Judicata 82.

Liquidation.

See Insolvency 6.

Lis Pendens.

1. *Quære* whether the doctrine of — applies in the case of a purchase in execution of decree. I. L. R. 1 All. 588.

See Debtor and Creditor 2.
Manager 5.
Mortgage 68, 91, 100.

Loan.

See Ancestral Property 4, 8, 18.
Attorney and Client 1.
Conditional Sale 2.
Endowment 14.
Evidence 6.
Gift 18.
Hindoo Law (Coparcenary) 14*a*.
,, Widow 50.
Husband and Wife 10, 11.
Insolvency 2, 4.
Insurance 8.
Interest 14.
Lien 1.
Limitation (Act IX of 1871) 32, 95.
Manager 2, 5.
Mortgage 48, 118.
Pauper Suit or Appeal 2.
Principal and Surety 1.
Purdah Woman 10.
Registration 21, 27, 32, 53.
Sale (in Execution of Decree) 80.
Stolen Property 2.
Zur-i-peshgee 1.

Local Investigation.

See Boundary 2, 3, 4.
Practice (Commissions) 1.
Survey 1.

Lost Property.

See Bailment 4.
Cheque 1.

Lumbardar.

1. A —, who had paid an arrear of Government revenue out of the collections of subsequent arrears without reference to the co-sharers, was entitled in a suit by a co-sharer for his share of the profits from such subsequent years, to claim in the suit a deduction on account of such payment. (F. B.) I. L. R. 1 All. 135.

2. Held by the Division Bench that a suit by a co-sharer in an undivided mehal against the heir of a deceased — for his share of profits collected by the — before his death is a suit cognizable, not by a Civil Court, but by a Revenue Court. I. L. R. 1 All. 512.

3. *Held* by the majority of the F. B. that the share of a co-sharer in an undivided mehal of the profits of the mehal for any agricultural year are due to him from the — as soon as, after the payment of Government revenue and village expenses, there is a divisible surplus in the hands of the —, unless by agreement or custom a date is fixed for taking the accounts and dividing the profits, in which case any divisible surplus which may have accrued prior to that date is due on that date, and the divisible profits in respect of any arrears which may be collected after that date are due when they reach the hand of the — or his agent. (F. B.) *Ib.*

4. A certain mehal, of which plaintiff claimed a one-third share of the profits for a certain year, belonged in equal shares to the defendant (—), and S and R, his two brothers, who held certain seer-land in partnership. Plaintiff had acquired the share of S by auction-purchase, S thus becoming an ex-proprietary tenant. The seer-land was not included in the rent-roll of the mehal, but was admitted by the defendant to be assessable with rent at a certain rate per beegah: *Held* that, whatever might be the course proper to be taken for assessing such seer-land or S's share of it with rent, and notwithstanding that such course had not been taken, plaintiff was entitled in this suit to claim and obtain his share in the profits of the seer-land. I. L. R. 1 All. 659.

5. The land in a certain mehal was recorded as held by M, the —, as *Khood Kasht* at a certain nominal rental. For two years in succession M sublet such land in part or in whole for a less amount than such nominal rental; the third year such land lay fallow. Certain persons sued as co-sharers in the mehal to recover from M their share of the profits on account of such years. M set up in defence that there were no profits, but on the contrary a small loss. The Lower Courts held M answerable for the rental recorded: *Held* that it was doubtful whether Act XVIII of 1873 s. 209 was applicable in this case; and that, even if it were so, the Lower Courts having neither found that more was realised from the land than had been accounted for by M, nor that the failure to realise more was owing to gross negligence or misconduct on his part, the decree of the Lower Courts could not be sustained. I. L. R. 2 All. 239.

Lunatic.

1. Act XXXV of 1858 contemplates only the question of lunacy or sanity at the time of the enquiry; there is no provision in the Act that the enquiry shall extend to the ascertainment of the period at which the alleged — first became of unsound mind. The report of an officer on such enquiry has not the effect of *res judicata* upon the issue between two parties who allege that the lunacy commenced at different times. (P. C.) 2 P. C. R. 371 (15 W. R. P. C. 1; 6 B. L. R. 509; 13 Moo. 519).

2. The authority of the Criminal Courts over an accused declared under Act X of 1872 s. 426 to be of unsound mind, ceases after the transmission of such accused to the place of safe custody appointed by the Local Government; and such authority can only be revived under the circumstances mentioned in s. 432. (Cr.) I. L. R. 2 Cal. 356.

See Court of Wards 2.
Gift 10.
Registration 11.

Lurking House Trespass.

See Criminal Trespass 3.

Mafee-birt Tenure.

1. Whatever the words — may have imported originally, the *primâ facie* meaning of the words has come to be a hereditary tenure. (P. C.) 2 P. C. R. 802 (19 W. R. 211).

Magistrate.

1. A — should not give evidence in a case in which he is acting judicially if he can possibly avoid doing so. (Cr.) 25 W. R. Cr. 57 (I. L. R. 2 Cal. 23). *See also* I. L. R. 2 Cal. 405.

2. Nor should he be appointed to conduct a prosecution in a case in which he may have to act judicially. I. L. R. 3 Cal. 622.

3. Act X of 1872 s. 122 authorizes a — to record the statement of a person who appears before him as a witness, as well as the confession of a person accused of an offence. (Cr.) I. L. R. 2 Bom. 643.

4. A Village Moonsiff in the Madras Presidency is a — within the meaning of Act I of 1872, s. 26; the word "include" in Act I of 1868 s. 2 cl. 13 and other clauses being intended to be enumerative, not exhaustive. (Cr.) I. L. R. 2 Mad. 5.

Magistrate (*continued*).

5. A confession recorded by a —, who afterwards conducts the enquiry preliminary to committal, and has jurisdiction to do so, is to be treated as an examination under Act X of 1872 s. 193 and not as a confession recorded under s. 122 notwithstanding that the prisoner may have been brought before the — before the conclusion of the Police investigation. To such a confession consequently the provisions of the last paragraph of s. 346 apply. (F. B. Cr.) I. L. R. 5 Cal. 954.

6. S. 122 of the above Act contemplates and provides for cases in which confessions are recorded by a — other than the — by whom the case is enquired into or tried. (F. B. Cr.) *Ib.*

7. When a confession is made to a — by an accused person during an enquiry held previously to the case being taken up by the committing officer, and by an officer acting merely as a recording officer, it must be recorded in strict accordance with the provisions of Act X of 1872 ss. 122 and 346. If the provisions of these sections have not been fully complied with by the recording officer, the Court of Session may take evidence that the accused person duly made the statement recorded; but a Court of Session is not at liberty to treat a deposition sent up with the record and made by the recording officer before the committing officer to the effect that the accused person did in fact duly make before him the statement recorded as evidence of that fact. In such a case the recording officer must himself be called and examined by the Court of Session, except in cases in which the presence of the recording officer cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court of Session considers unreasonable. (Cr.) I. L. R. 5 Cal. 958.

See Bench of Magistrates.
Criminal Proceedings 4, 5, 9, 10, 13, 14.
Discharge 1, 2, 3.
Extradition 1.
High Court 7, 9, 11, 12, 13, 20.
Imprisonment 2.
Jurisdiction 16, 24.
Practice (Appeal) 7.
Rule Nisi 1.
Security 1.
Stamp Duty 7, 24.
Unlawful Assembly 1.
Witness 5, 6.

Mahalkari.

See Public Servant 7.

Mahomedan.

See Benamee 4, 5, 9, 10.
Conjugal Rights 1, 3, 4.
Debtor and Creditor 2.
Divorce 9.
Dower 1, 12, 17.
Endowment 35, 36.
Gift 2, 9.
Guardian and Minor 4.
Husband and Wife 1, 2, 15.
Joint Family 1.
Khoja.
Mahomedan Law.
,, Widow.
Marriage, 2, 4, 12, 14.
Obstruction 4.
Sale (in Execution of Decree) 12.
Succession 1.
Will 13.

Mahomedan Law.

1. According to the true construction of Reg. IV of 1793 s. 15, the — of succession applicable to each sect (Sheeah or Soonnee) ought to prevail as to litigants of that sect. (P. C.) 2 P. C. R. 993 (2 Moo. 441).

2. According to — a residuary heir should not be allowed lightly to disturb the long possession by a widow of her husband's estate. (P. C.) 2 P. C. R. 525 (17 W. R. 108).

3. According to — there may be a renunciation of a right to inherit implied from the ceasing or desisting from prosecuting a claim. (P. C.) *Ib. But see* 2 P. C. R. 493 (17 W. R. 1; 14 Moo. 346). *See* 22 W. R. 267.

4. As a general rule, a widow takes no share in the return, *i.e.* on failure of residuaries; but some of the authorities seem to hold that, if there are no heirs by blood alive, the widow takes the whole estate to the exclusion of the fisc. (P. C.) *Ib. See also* I. L. R. 3 Cal. 702.

5. Where by an arrangement between a widow (a claimant to unpaid dower) and son, whereby the latter relinquished his share in his late father's property, which arrangement was construed as giving the mother only a life interest, the son retaining the legal reversion; the creation of such a life-interest was held inconsistent with Mahomedan usage. (P. C.) 2 P. C. R. 599 (17 W. R. 525).

6. According to — the acknowledgment of illegitimate children as sons and heirs do not constitute them brothers and heirs to each other. (P. C.) 2 P. C. R. 931 (21 W. R. 113; 13 B. L. R. 182; L. R. 1 I. A. 23).

7. Willa rule of —. *See* Slave 1.

8. A, a Mahomedan, died possessed of immoveable property, and leaving a widow, a daughter, and a sister (B), his heiresses according to —. B was entitled to a one-sixth share of an undivided moiety of a certain portion of the property which was situated in Calcutta. After A's death, the L. Bank sued his daughter and her husband and two of his husband's brothers in a Mofussil Court to realize certain mortgage securities executed by A to the Bank, and obtained a decree by consent. Neither the widow, nor B who was then absent from the country, were parties to this suit. The Bank, in execution of their decree, caused certain property of A, including the undivided moiety of the Calcutta property to be sold by the Sheriff of Calcutta. The defendant became the purchaser at this sale, and obtained possession of the property. The certificate of sale stated that what was sold was "the right, title, and interest of A, deceased, the ancestor, and of the defendants (naming them); the representatives, in a moiety of a piece of land situate etc.:" B afterwards sold and assigned her share in (among other properties) the above-mentioned undivided moiety of the Calcutta property to the plaintiff, who now sued the purchaser at the execution-sale to recover the subject of his purchase: *Held* that the decree and the execution founded upon it did not affect B's share in the estate of A, and consequently that the property in question did not pass to the defendant under the Sheriff's sale. (F. B.) I. L. 4 Cal. 142.

9. A decree by consent against one heir of a deceased debtor cannot, under the —, legally bind the other heirs. *Ib.*

10. The widow of a Khoja Mahomedan who has died childless and intestate succeeds to her husband's estate in preference to his sister. (O. J. Ap.) I. L. R. 3 Bom. 34.

11. Where a defendant alleged a special custom of the Khoja community at variance with the Hindoo law of inheritance: *Held* that the burden of proving the alleged custom rested upon her. (O. J. Ap.) *Ib.*

12. In order to prove a custom of inheritance among Khoja Mahomedans at variance with the rules of Hindoo law, evidence merely of the opinion of the leading members of the caste, is not enough. Instances must be proved in which the alleged custom has been observed and followed. (O. J. Ap.) *Ib.*

13. F, one of the heirs to the property of his parents (the family being Mahomedans) was "missing" when they died; and subsequently when the other heirs to such property sued his daughter M for the possession of a portion of such property, M set up as a defence to the suit that her father was alive, and that during his lifetime the plaintiffs could not claim his share in such portion: *Held* that the suit being one to enforce a right of inheritance, must be governed by the — relating to a missing person. I. L. R. 2 All. 625.

MAHOMEDAN LAW (*continued*).

See Cazee 1, 2.
Conjugal Rights 1, 4.
Divorce 2, 9, 10, 11.
Dower.
Endowment 35, 36.
Gift 2, 4, 5, 6, 7, 8, 9, 10, 17, 18.
Guardian and Minor 17, 19, 25.
Maintenance 11.
Marriage 8.
Pre-emption 3, 4, 6, 8, 9, 11, 12.
Trust 8.
Will 12, 15, 16.
Zemindaree 1.

Mahomedan Widow.

See Dower 1, 2, 3, 4, 5, 17.
Guardian and Minor 15.
Mahomedan Law 2, 3, 4, 5, 10.
Trust 8.

Maintenance.

1. The *quantum* of — to be awarded is a question with which the Courts in India are best able to deal, and the Privy Council will not interfere with the discretion exercised in this respect, unless on strong grounds. (P. C.) 2 P. C. R. 135 (10 W. R. P. C. 17; 12 Moo. 397; 1 B. L. R. P. C. 1).

2. It is not essential to the title to — out of his father's estate of the natural son of a deceased Hindoo that he should be shown to have been born in his father's house, or of a concubine possessing a peculiar *status* therein. (P. C.) 2 P. C. R. 175 (11 W. R. P. C. 6; 2 B. L. R. P. C. 15; 12 Moo. 203).

3. The natural son of a deceased Hindoo zemindar may have a right to — out of private property which descended from his father to the present zemindar, but not out of private property which the latter has acquired in any other way. (P. C.) *Ib.*

4. Where M executed on behalf of N a *ladawinamah* or deed of disclaimer, disclaiming all right to an estate to which he was one of the heirs-at-law, upon consideration of receiving a monthly allowance for —, and accepted a *perwannah* securing that allowance to himself and his heirs: *Held* that the *ladawinamah* and *perwannah* amounted to a valid contract by which the parties were respectively bound; and that the *ladawinamah* being founded on good consideration was binding on the heirs, who could not set it aside except by returning the money which had been paid in advance on account of the — allowance. (P. C.) 3 P. C. R. 165 (24 W. R. 28).

5. If a Hindoo father possesses practically no partible property, his legitimate son, though adult, and suffering from no disability to inherit, is entitled to — from him. I. L. R. 2 Bom. 346.

6. A Hindoo lady obtained a decree awarding her — at a certain fixed rate and charging the assets of a certain firm with the payment of such —. There was no provision in this decree that such rate was subject to any modification which future circumstances might render necessary. The assets of such firm having diminished, the proprietor of the same brought a suit for the reduction of such rate of —: *Held* that such suit was maintainable. I. L. R. 1 All. 594. *See also* 24 W. R. 428.

7. The doctrine that in certain relationships, and independently of the possession of ancestral estate, — is a legal and imperative duty, while in other relationships it is only a moral and optional duty, discussed. (O. J. F. B.) I. L. R. 2 Bom. 573.

8. Ordinarily, the right to — does not rest upon contract. It is a liability created by the Hindoo law, and arises out of the jural relation of the Hindoo family. It is enforceable in numerous instances in which there is no connexion with contract. I. L. R. 2 Bom. 624.

9. In determining questions under chap. XLI of Act X of 1872, as to the — of wives and families in certain cases a Magistrate has no power to enter into any question as to the lawful guardianship of a child. (Cr.) I. L. R. 4 Cal. 374.

10. Though the — of a wife and children may in certain circumstances be a charge on the husband's property as against a purchaser, it is not so in a case in which the sale took place in payment of a family debt, which it was the primary duty of the head of the family to pay. I. L. R. 2 Mad. 126.

11. A Presidency Magistrate is competent to stay an order for — granted under Act IV of 1877 s. 234 and to refuse to issue his warrant under cl. 3 of that section and to try all questions raised before him which affect the right of a woman to receive —. There can be no distinction raised between a dissolution of marriage obtained under the Indian Divorce Act and a dissolution obtained under the Mahomedan law. It is only on proof of the existence of the relationship of husband and wife, that a Magistrate can make an order under s. 234 granting — to a wife; but where proof has been given that such relationship has ceased to exist, he may stay an order already made under that section. (Cr.) I. L. R. 5 Cal. 558.

See Alimony.
Ancestral Property 1.
Champerty 3.
Guardian and Minor 22.
Hindoo Widow 10, 11, 16, 18, 21, 25, 26, 27, 28, 31, 32, 33, 34, 38, 39, 40, 41, 42, 43, 44, 46, 47, 49, 51, 52, 53, 55, 58, 59, 63.
Husband and Wife 9.
Insolvency 14.
Illegitimate 1, 3, 4, 5, 7, 8, 9.
Issues 2.
Letters of Administration 2.
Limitation 12.
" (Act XIV of 1859) 15, 27.
" (Act IX of 1871) 7, 88.
Mokurruree 7.
Pachete 1.
Pension 3.
Small Cause Court 18.
Streedhun 7.
Will 1, 2.
Zemindaree 5.

Majority.

1. The age of — of a Hindoo, resident and domiciled within the town of Calcutta, but possessing lands in the Mofussil paying revenue to Government, is the end of fifteen years. (F. B.) I. L. R. 1 Cal. 108 (24 W. R. 464).

2. The appointment of a guardian *ad litem* is sufficient to make the minor party subject to Act IX of 1875 s. 3 and to constitute his period of — at 21, at any rate so far as relates to the property in suit, notwithstanding that such minor would, but for such appointment, have attained — at 18. (O. J.) I. L. R. 1 Cal. 388.

See Ancestral Property 11.
Guardian and Minor 30.

Malabar.

See Karanavan.
Mortgage 48.
Sthanam 1.

Mala Fides.

See Joinder of Causes of Action 2.
Mortgage 44.

Malgoozar.

See Trust 8.

Malice.

See Arrest 3.
Malicious Prosecution.

Malicious Prosecution.

1. What a plaintiff is bound to prove in a suit for —. (P. C.) 2 P. C. R. 547 (17 W. R. 283; 11 B. L. R. 321).

2. The prosecution of legal proceedings, which are instigated by malice and are at the same time groundless, is a wrong to the person who suffers damage in consequence of them, for which an action will lie. (P. C.) 3 P. C. R. 361 (L. R. 4 I. A. 23; I. L. R. 2 Cal. 233). *But see* I. L. R. 1 Bom. 475.

See Damages 3.
Defamation 1.

Malikhana.

See Attachment 11.
Limitation (Act XV of 1877) 41.
Mortgage 33, 34, 35, 107.
Oudh Sub-Settlement 3.

Mamlutdar.

1. The High Court is not deprived, by Act III of 1876 (Bombay), of the powers of superintendence and revision which it exercised over the Court of a — previously to the passing of that Act. (F. B.) I. L. R. 4 Bom. 168.

2. Under the above Act, the Court of a — has, for purposes of the Act, jurisdiction in a town or city situated within the ordinary limits of his talooka. *Ib.*

3. The word "premises" used in s. 4 of the Act includes houses," and consequently the jurisdiction of the Court of a — extends over a house for purposes of the Act. *Ib.*

4. The city of Ahmedabad being within the limits of the Daskroi Talooka, the jurisdiction of the Court of the Daskroi — extends over a house in the city of Ahmedabad. *Ib.*

See Cesses.
Land Dispute 1, 2.
Limitation (Act IX of 1871) 110.
Meerasee 2.

Manager.

1. Under the Hindoo law, the right of a *bonâ fide* incumbrancer who has taken from a *de facto* — a charge on lands created honestly, for the purpose of saving the estate, or for the benefit of the estate, is not (provided the circumstances would support the charge had it emanated from a *de facto* and *de jure* —) affected by the want of union of the *de facto* with the *de jure* title. The question as to the *onus* of proof in such cases is one not capable of a general and inflexible answer; but the presumption proper to be made will vary with circumstances. (P. C.) 2 P. C. R. 29 (18 W. R. 81*n*; 6 Moo. 393).

2. Under the Hindoo law, the power of a — for an infant heir to charge ancestral estate is a limited and qualified one to be exercised in a case of need, or for the benefit of the estate. Where the charge is one that a prudent owner would make in order to benefit the estate, the *bonâ fide* lender is not affected by the precedent mismanagement of the estate. The lender is bound to enquire into the necessities for the loan, and to satisfy himself that the manager is acting for the benefit of the estate. But if he does so enquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and he is not bound to see to the application of the money. The mere creation of a charge by a —, securing a proper debt, cannot be viewed as improvident management; and a *bonâ fide* creditor should not suffer when he has acted honestly and with due caution, but is himself deceived. *Ib.* *See also* 3 P. C. R. 375 (L. R. 4 I. A. 52; I. L. R. 2 Cal. 341).

3. Where a testator dealt with the income of his several estates as one fund, and gave that income to his five sons in equal shares with a commission of 10 per cent. from the whole income to the one who was to be —: *Held* that this commission was to be calculated not upon the gross collections, but upon the net income of the whole of the estates, being the fund which, subject to that commission, was divisible amongst the co-sharers. (P. C.) 3 P. C. R. 788 (L. R. 7 I. A. 196).

4. Disallowance of sums laid out by the — on his own private account and of expenses incurred for his own private purposes, and charging him with rent of a house which was occupied by him as his own exclusive residence, but which the will directed should, if not sold, be let, approved by the Privy Council. (P. C.) *Ib.*

5. Act VIII of 1859 s. 243 does not give the Court authority to appoint a — to carry on a judgment-debtor's business pending execution proceedings, and to invest him with power to raise money for that purpose. *Quære* whether the Civil Courts in the Mofussil have the power, possessed by the Courts of Chancery in England and by the High Court in Calcutta, of managing the property of parties to a cause pending suit or administration. But however this may be, the Court's —, under such circumstances, only acquires a right to charge his costs and expenditure against the parties to the suit or persons who have knowingly placed themselves in a like position relative to his management; and even then he can only do so in respect of such expenditure as has been expressly sanctioned by the Court. (O. J. Ap.) I. L. R. 2 Cal. 58.

6. Act VIII of 1859 s. 243 does not apply to a decree on a mortgage, when the decree declares that certain property is to be sold in satisfaction of the mortgage debt. A —, therefore, cannot be appointed under s. 243 in such a case. I. L. R. 3 Cal. 335.

See Ancestral Property 1, 12.
Attachment 6.
Court of Wards 2.
Criminal Breach of Trust 1.
Endowment 4, 14, 23, 33.
Guardian and Minor 2, 25, 29.
Hindoo Law (Coparcenary) 5, 23, 24, 25.
,, (Religious Ceremonies) 1.
,, Widow 30.
Jurisdiction 12.
Karanavan 4.
Lease 1, 7, 8.
Lien 1.
Limitation (Act XIV of 1859) 11*a*, 28.
,, (Act IX of 1871) 38.
Mortgage 39, 40.
Oudh Talookdars Relief 1.
Partnership 5.
Pre-emption 6.
Res Judicata 31.
Service 3, 5, 6.

Mandamus.

See High Court 11.
Sale (in Execution of Decree) 7.

Manu (Institutes of).

See Hindoo Law 4.

Map.

See Boundary 5.
Evidence (Documentary) 11.
Survey 2, 8.

Marangupury.

1. Succession to the zemindaree of —. (P. C.) 2 P. C. R. 967 (21 W. R. 358; L. R. 1 I. A. 282; 14 B. L. R. 115). *See also* 3 P. C. R. 263 (25 W. R. 291; L. R. 3 I. A. 155; I. L. R. 1 Mad. 69).

Maraver Caste.

See Marriage 8.

Marine.

1. Where a collision took place by the stern of the "Dacca" running amidships into the port side of the "Michelino" while at anchor, the burden of proof lay very heavily upon the "Dacca" to show that the collision so caused with a vessel properly at anchor in a proper place was not the consequence of negligence and bad seamanship; and their Lordships were of opinion that the evidence clearly established that the "Dacca" was to blame for not keeping a proper look-out, which reason alone prevented her from seeing the light of the other vessel at anchor. (P. C.) 3 P. C. R. 409.

2. The powers conferred on Courts of Admiralty by Act IV of 1875 s. 5 of investigating charges of incompetency or misconduct, against the holders of Board of Trade certificates, is totally distinct from the power of enquiry into wrecks or casualties, conferred on tribunals by the same Act. (O. J.) I. L. R. 5 Cal. 453.

3. It is not correct to say that all the sections in chap. II of the above Act, after s. 5, apply only to enquiries under that section; nor that the Courts mentioned in that section are the only Courts that can cancel a Board of Trade certificate, or report so as to enable the Local Government to cancel its own certificate. A special Court, enquiring into a casualty under s. 3, has power, if all the provisions of the Act are duly complied with, to cancel a Board of Trade certificate, or to make a report to the Local Government, upon which the Government may cancel its own certificate under s. 18. (O. J.) *Ib.*

4. In investigating charges of incompetency or misconduct under the above Act, it is not necessary, in order to give the Court jurisdiction, that such incompetency or misconduct should have occurred on or near the coasts of India. (O. J.) *Ib.*

5. What is a sufficient "statement of grounds" within the meaning of ss. 6 and 7 of the same Act? (O. J.) *Ib.*

6. An investigation under Act IV of 1875 s. 5 into charges of incompetency or misconduct cannot proceed, unless the person whose competency or conduct is to be enquired into has been proved to be the holder of a certificate granted by the Board of Trade. Such a certificate is not a "public document" within the meaning of Act I of 1872 s. 74. (O. J.) I. L. R. 5 Cal. 568.

See Insurance 1, 2, 3, 4, 5, 6, 7.
Shipping.

Market.

1. A Magistrate is not empowered to pass an order under Act X of 1872 s. 518 which has more than a temporary operation; the grant of what is in effect an order for a perpetual injunction is entirely beyond his powers. When a plaintiff alleged that he had held a *haut* on his own land for many years on Tuesdays and Fridays; that the defendant had set up a rival *haut* on these days and prevented persons from attending the plaintiff's *haut;* that this led to disturbances which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his *haut* on the said days, and that the plaintiff suffered loss and damage in consequence: *Held* that, assuming these facts to be true, the plaintiff was entitled to a decree declaring, as against the defendant, that the plaintiff had a right to hold his *haut* on Tuesdays and Fridays. I. L. R. 5 Cal. 7.

Marriage.

1. A — between two persons of the Soodra caste is not invalid merely because they belong to two different classes or divisions of that caste, or because the wife was the offspring of an illegitimate father. (P. C.) 2 P. C. R. 267 (12 W. R. P. C. 41; 13 Moo. 141; 3 B. L. R. P. C. 1). *See also* 23 W. R. 334 (I. L. R. 1 Cal. 1).

2. Where a man and woman, after cohabiting for some time, became Mahomedans and contracted a Mahomedan —, the man being already the husband in Christian — of a living Christian wife, the validity of the Mahomedan — was doubted. (P. C.) 2 P. C. R. 521 (17 W. R. 77; 10 B. L. R. 125; 14 Moo. 309).

3. Mahomedan law as to — of minors among Soonnees and Sheeahs; presumption as to puberty; *fazoolee* —. (P. C.) 2 P. C. R. 830 (26 W. R. 26; L. R. I. A. Sup. 192).

4. A Cazee who was present at a Mahomedan — should be called as a witness when the — is to be proved. (P. C.) 2 P. C. R. 882 (20 W. R. 214).

5. Nikah —. *See* Slave 1; *post* 14.

6. Act VIII of 1859 ss. 92 and 93 are not applicable to a suit for specific performance of a contract to give in —. I. L. R. 1 Cal. 74 (24 W. R. 207).

7. Courts of law will not recognise the authority of a caste to declare a — void, or to give permission to a woman to re-marry. *Bonâ fide* belief that the consent of the caste made the second — valid does not constitute a defence to a charge, under s. 494 Penal Code, of marrying again during the lifetime of the first husband, or to a charge of abetment of that offence under that section combined with s. 109. (Cr.) I. L. R. 1 Bom. 347.

8. The Court, applying the principles of the Hindoo law, held that a widow of the Maraver caste, who has re-married, has no claim to the property of her first husband. I. L. R. 1 Mad. 226.

9. The act of causing the publication of banns of — is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man, having a wife living, caused the banns of — between himself and a woman to be published, he could not be punished for the attempt to marry again during the lifetime of his wife. (Cr.) I. L. R. 1 All. 316.

10. The Hindoo law, at least as evidenced by usage, though it permits the Asura form of — among the mercantile and servile classes, does not prohibit to those classes the more approved form of —. (O. J.) I. L. R. 2 Bom. 9.

11. The forms of — in use among the Nagar Vissa section of the Vania caste correspond to one or other of the approved forms, and not to the Asura, and the giving of *palu* does not constitute a purchasing of the bride.

12. A Mahomedan guardian of a married female infant, who, while her husband is living, causes a — ceremony to be gone through in her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment under ss. 109 and 494 Penal Code. The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned. (Cr.) I. L. R. 4 Cal. 10.

13. Act I of 1872 s. 50 shows that where — is an ingredient in an offence, as in bigamy, adultery, and the enticing of married women, the fact of the — must be strictly proved. (F. B. Cr.) I. L. R. 5 Cal. 566.

14. The conversion of a Hindoo wife to Mahomedanism does not *ipso facto* dissolve her — with her husband. She cannot, therefore, during his lifetime enter into any other valid — contract. Her going through the ceremony of *nikah* with a Mahomedan is, consequently, an offence under s. 494 Penal Code. (Cr.) I. L. R. 4 Bom. 330.

15. A man, who is a member of the Hulwaee caste, may contract a — in the *sagai* form with a widow, even if he has a wife living, provided, in the latter case, that he is a childless man. (O. J.) I. L. R. 5 Cal. 692.

16. *Quære* whether a married woman may not contract a *sagai* —, notwithstanding that her husband is living, if the punchayet has examined the case, and reported that her husband is unable to support her. (O. J.) *Ib.*

See Arbitration 20.
Custom 17.
Divorce.

MARRIAGE (*continued*).

See Gift 10.
Guardian and Minor 4, 18.
Hindoo Law (Adoption) 31, 41.
" (Inheritance and Succession) 44.
" (Religious Ceremonies) 5.
Hindoo Widow 64.
Legitimacy 2, 4.
Married Woman.
Prostitution 3.
Slave 1, 2.
Streedhun 1.
Succession 2.
Will 21, 51.

Married Woman.

1. Enticing away a — with criminal intent. *See* Compounding 1; Marriage 13.
2. Harbouring a —. *See* Execution of Decree 16; Husband and Wife 7.

See Husband and Wife.
Marriage 16.

Marshalling.

See Mortgage 123.

Master and Servant.

1. In an action brought by an assistant in a tea garden for damages for wrongful dismissal, the Judge of the Small Cause Court was of opinion that under the circumstances there was no implied warranty on the part of the plaintiff of his competence, and the grounds for dismissal having been expressly stated in the agreement, the defendants were not justified in dismissing him on another ground, and therefore should not be allowed to give evidence of his incompetence: *Held*, on reference to the High Court, that the plaintiff having expressly undertaken to render true and just accounts, his incompetence to do so would, if proved, be an answer to the action, and therefore the defendants ought to have been allowed to give evidence that he was incompetent. "True and just accounts" meant such accounts as an inexperienced assistant in a tea garden might reasonably be asked to render, and were not to be interpreted merely as an undertaking that the plaintiff would act honestly by his employers. *Held* also that an agreement expressly stating the grounds of dismissal did not preclude the defendants from dismissing the plaintiff for incompetence. I. L. R. 2 Cal. 33.

2. In a suit for damages for wrongful dismissal in which the defendants pleaded justification by reason of plaintiff's misconduct: *Held* (1) that the defendants at the hearing could not give evidence of a transaction involving instances of misconduct not set forth in their written statement: they should either have filed a supplemental written statement before the hearing, or have furnished plaintiff with particulars of the misconduct in question, and intimated to him their intention of relying on the transaction as going to establish the general allegation of misconduct; and (2) that although the transaction in question could not be made the subject-matter of an ancillary issue, and evidence of it, as such, could not be received, yet that questions relating to it might be put to plaintiff in cross-examination for the purpose of affecting his credit. (O. J.) I. L. R. 4 Bom. 576.

See Bailment 3, 4.
Railway 6, 7.
Timber 2.

Maternal Cousin.

See Hindoo Law (Adoption) 31.
" (Inheritance and Succession) 2.

Maxims.

1. *Quod fieri non debuit factum valet.* *See* Hindoo Law (Adoption) 16, 41.
2. *Caveat emptor.* *See* Sale (in Execution of Decree) 32; Sheriff 1.
3. *In pari delicto potior est conditio possidentis.* *See* Estoppel 10.

Mayukha.

See Ancestral Property 1.
Hindoo Law 4.
" (Inheritance and Succession) 41, 46.

Measurement.

See Boundary 4.
Enhancement 19, 20, 28.
Lease 4.

Measure of Damages.

See Damages.

Meerasee.

1. Where a — pottah, which is not proved because of its great age and of there being no witnesses to prove it, is put forward as a document intended to operate as a — tenure, it is necessary to show that it was accompanied by possession. (P. C.) 2 P. C. R. 919 (21 W. R. 22).

2. B, a meeraseedar, addressed a *razinama* to the Mamlutdar, resigning certain — lands in favor of L (to whom at the same time he delivered possession of the lands), and containing no reservation or qualification: *Held* that the transfer to L and the rights of B were wholly extinguished. I. L. R. 1 Bom. 91.

3. A meeraseedar who has given in a *razinama*, is entitled to eject the tenant put in possession of his — lands by the Collector, provided he sue within the period of limitation, and the *razinama* contain no stipulation whereby he expressly abandons his — rights. I. L. R. 1 Bom. 208.

4. D, widow of a Hindoo meeraseedar, by a duly registered deed dated 24th November 1869, mortgaged the — lands of her deceased husband to R M for Rs. 150. Subsequently, on 5th July 1872, D executed a *razinama* of the land in favor of R G: *Held* that the mortgage bound D's estate in the — land as a Hindoo widow: that whether the property is regarded as — or as that of an ordinary occupant, it is transferable under Act I of 1865 (Bombay) s. 36; that when D executed the *razinama*, there was nothing left in her to relinquish or otherwise deal with more than the equity of redemption; that consequently R G took nothing by the *razinama* executed in his favor by D except this equity of redemption. I. L. R. 1 Bom. 577.

5. The distinction between the present and the case of a purchase at a sale for arrears of Government land revenue is that at the latter the purchaser takes the land discharged of all incumbrances, inasmuch as the revenue is the paramount charge upon the land. *Ib.*

6. The plaintiffs, village meeraseedars, sued to eject defendants in possession of the waste lands of the village, and to obtain a pottah for the same. The facts were that on three several occasions, beginning in Fuslee 1269, applications were made by strangers for permission to cultivate waste lands belonging to the village, and that on each occasion the meeraseedars successfully intervened, asserting a preferential right to obtain the lands for cultivation. Pottahs were accordingly made out in their names. But on no occasion did they either cultivate or pay kist for the lands; and subsequent to the last occasion in 1867, the lands were put up to auction for arrears of kist. The meeraseedars bought them in. But the Collector refused to accept the meeraseedars as tenants, cancelled the sale, and issued a pottah to the agent of a former applicant. Plaintiffs brought their suit in March 1873, and the District Moonsiff dismissed it, holding that the conduct of plaintiffs justified the Revenue authorities in the course they had

MEERASEE (*continued*).

adopted. The District Judge reversed the decree of the Moonsiff: *Held* that the Collector's settlement with the meeraseedars was in form an annual settlement, and that on the face of the transaction there was nothing which could be regarded as amounting to the creation or recognition of a permanent right in the meeraseedars (plaintiffs) such as could be determined only by resignation or by abandonment or by proceedings under Act II of 1864 (Madras); that it was apparent that the meeraseedars had no intention either to cultivate the land or (except on legal compulsion) to pay the assessment; and that in such circumstances it was competent to the Revenue officials to decline to accept the plaintiffs as tenants. *Held* also that the Durkhast Rules of the Revenue authorities did not constitute rights enforceable in a Court of law; and that even if the plaintiffs had been wrongfully dispossessed, their only action would be against the Government for such wrongful dispossession; and that the relief sought in the present suit was quite incommensurate with the injury complained of. (F. B.) I. L. R. 1 Mad. 205.

7. Meeraseedars who had *sunnuds* but who have lost them, and those who never had them, may prove their title by other evidence; and long possession is a strong element in such proof. A *sunnud* is not indispensable to the proof of — tenure. A — right or perpetuity of tenure, like other facts, may be proved by various means. I. L. R. 3 Bom. 340.

8. Accordingly, where a plaintiff claimed to hold certain lands in *meeras* and under a right of perpetual cultivation by the custom of the country, and sought to recover the lands from the defendant who claimed as purchaser, at a Court sale, of the right and interest of the enamdar of the said lands, and the Lower Courts dismissed the suit on the ground that the plaintiff had failed to prove any right of perpetual cultivation, the District Court, in appeal, observing that no term of occupation as a tenant of *enam* land would confer a right of perpetual cultivation, and that nothing short of a regular *sunnud* would confer on the plaintiff his alleged right in the lands, the High Court in special appeal reversed the decrees of the Courts below, and remanded the case for a new trial on the point whether the plaintiff as a meeraseedar or by local usage in virtue of his long possession and uniformity of payment of rent or assessment or otherwise, previously to the Court sale to defendant, had acquired the right to hold the lands in perpetuity on payment of a fixed or other rent ascertainable by local usage. *Ib.*

See Endowment 30.
Enhancement 25.

Mehal.

1. Khalisa mehal. *See* Sale (in Execution of Decree) 18.

See Lumbardar 2, 3, 4, 5.
Mortgage 55, 58, 116.
Puttee 4, 5.
Rent 7, 8.

Merger.

See Mortgage 83.

Mesne Profits.

1. Where, in a suit by L for recovery of certain lands with —, a decree was given by the Privy Council declaring L absolutely entitled to two mouzahs, and also to certain lands as to which the High Court was ordered to institute certain enquiries: *Held* that he might have waited the result of these enquiries before applying for execution in respect of the two mouzahs; and that although the decretal order of the Privy Council did not specifically mention anything about the — of those two mouzahs, the right to — was consequential on the declaration for possession in the decree and upon possession. (P. C.) 2 P. C. R. 353 (14 W. R. P. C. 23; 5 B. L. R. 605; 13 Moo. 490). *See* 14 W. R. 485; 16 W. R. 30; 21 W. R. 195.

2. Where the final rectification of shares of land results in one party getting a larger portion than he had before, his right to — for such portion follows as a matter of course, and limitation for such — runs from the time when the rightful partition was completed. (P. C.) 2 P. C. R. 413 (15 W. R. P. C. 38; 7 B. L. R. 113).

3. Plaintiffs, having been guilty of laches, were held not entitled to recover, as against purchasers for valuable consideration without notice of their title, — from any date earlier than that of the institution of the suit. (P. C.) 3 P. C. R. 61 (23 W. R. 99; 14 B. L. R. 386; L. R. 2 I. A. 48).

4. According to Act XXIII of 1861 s. 11, where a decree is silent as to interest or — subsequent to institution of suit, the Court executing the decree cannot give such interest or —, but plaintiff may still assert his right to such — in a separate suit. (P. C.) 3 P. C. R. 190 (24 W. R. 193; 15 B. L. R. 383; L. R. 2 I. A. 219). *See also* 3 P. C. R. 514 (L. R. 5 I. A. 78; I. L. R. 3 Cal. 602); I. L. R. 5 Cal. 27, 563.

5. Where a judgment-debtor executes an undertaking, by an act of the Court, that, in consideration of his remaining in possession pending appeal, he will, if the appeal goes against him, account in that suit and before that Court for the — in question, he cannot escape from that obligation because, when he contracted it, the practice of the Court proceeded upon a construction of the law which has since been pronounced to be erroneous. (P. C.) *Ib.*

6. The right to —, according to a stipulation in a deed of compromise, was held to run from a former decree affirming the compromise, and not from a subsequent decree which simply affirmed, with an explanation, the former decree. (P. C.) 3 P. C. R. 495 (L. R. 5 I. A. 31; I. L. R. 3 Cal. 654).

7. In December 1851 the Rajah of Ramnuggur executed a zur-i-peshgee mortgage of certain villages in favor of appellant's predecessors. The respondent's predecessor set up a mokurruree lease of one of the villages alleged to have been granted to them by the Rajah prior to the mortgage. The appellant's predecessors sued to set aside that lease as collusive, and to recover that village with —, and obtained a decree to that effect in 1860. Before execution of this decree was taken out, the Rajah obtained a judgment for some debt against appellant's predecessors, in execution of which he attached and sold their interest in the zur-i-peshgee lease: *Held* that the appellant was entitled to recover the — of the property up to the date of sale, the right to these — not having passed to the purchaser of the zur-i-peshgee rights. (P. C.) 3 P. C. R. 773 (I. L. R. 6 Cal. 213).

8. Where a decree is made under Act VIII of 1859 s. 197, proceedings taken after the original decree for possession, for the purpose of determining the amount of —, are in effect proceedings in continuation of the original suit; and until those proceedings are brought to a close, and an arrangement of the — come to, it cannot be said that a decree for any specific amount of money exists. I. L. R. 4 Cal. 629.

9. The wording of s. 197 is quite consistent with the view that, where a decree for possession is given, and an enquiry as to the amount of — is reserved, the decree for possession of the land is only a partial decree in the suit, and that there is to be a further enquiry and a further decree in respect of —. The words "for the execution of the decree" refer only to the execution of the decree for the land, and cannot refer to execution of that which has not then taken the form of a decree. *Ib.*

10. A Lower Court, in estimating in execution of a decree the amount of — due to the decree-holder, added together the totals of the rents which the Ameen found to have been paid in each year to the judgment-debtor, but did not allow interest upon each year's rent: *Held* that on the sum ascertained by the Ameen as the assets, less the collection charges derived each year from the estate, interest at six per cent. per annum should be allowed, to be calculated upon each year's — up to the date of the decree of the lower Court. I. L. R. 4 Cal. 674.

11. In determining the amount payable to the holder of a decree for —, a Court is bound to consider, not what has been, or what with good management might have been, realized by the party in wrongful possession, but what the decree-holder would have realized if he had not been wrongfully dispossessed. Under a decree for —, the decree-holder is entitled to interest on such profits from the time

MESNE PROFITS (*continued*).

at which they would have come to him if he had not been dispossessed. I. L. R. 4 Cal. 882.

12. Where the parties to a suit for certain land and for the payment of — in respect of the same were co-sharers in the estate comprising such land, and the defendants had themselves occupied and cultivated such land : *Held* that the most reasonable and fitting mode of assessing such — was to ascertain what would be a fair rent for such land if it had been let to an ordinary tenant and had not been cultivated by the defendants. I. L. R. 2 All. 651.

See Execution of Decree 22, 23.
Interest 7, 12.
Jurisdiction 34, 43.
Limitation 14, 48.
,, (Act IX of 1871) 49, 78.
Lumbardar 1, 2, 3, 4, 5.
Mortgage 56, 60, 62.
Res Judicata 28.
Trespasser 1.

Migration.

See Hindoo Law (Migration).

Military.

See Execution of Decree 24.
Jurisdiction 44, 48.

Mines.

See Deed of Sale 7.
Jurisdiction 13.
Lease 5.
Sale 5, 9.

Minor.

See Guardian and Minor.

Misappropriation.

See Bailment 4.
Small Cause Court 5.

Miscellaneous Proceedings.

See High Court 35.

Mischief.

1. It is not part of the offence, under s. 430 Penal Code, of — by causing a diminution of water supply for agricultural purposes that the act of the accused should be a mere wanton act of waste. It is sufficient that the act is done without any show of right. (F. B. Cr.) I. L. R. 1 Mad. 262.

2. If a person deals injuriously with property in the *boná fide* belief that it is his own, he cannot be convicted of —. I. L. R. 2 All. 101. *See also* 3 B. L. R. A. Cr. 17.

See Building 2.
Criminal Trespass 5, 6.

Misdescription.

See Railway 8.
Service Tenure 9.

Misjoinder.

See Enam 3.
Hoondee 8.
Joinder of Causes of Action 2, 3, 4.
Limitation (Act XV of 1877) 32.
Small Cause Court 7.

Misrepresentation.

1. Where upon the faith of an assurance given by a partner of a firm which had suspended payment that a certain deed was nothing more than an assignment to trustees for the benefit of creditors, the agents of certain creditors signed such deed without reading it, and it afterwards appeared that the deed contained a release by the creditors to the debtors: *Held* that, so far as the deed operated as a release, their signatures were null; that it was the duty of the partner to communicate to the agents the existence of the release, and that, not having done so, he committed a breach of duty constituting — as provided by Act IX of 1872 s. 18 cl. 2 ; and that, under the circumstances, the agents had not the means of discovering the truth with ordinary diligence, so that the exception to s. 19 was not applicable. (O. J.) I. L. R. 3 Bom. 242.

See Contract 6.
Deed of Sale 7.
Estoppel 4, 6, 7.
Mortgage 30.
Principal and Surety 12.
Prostitution 3.
Sale (in Execution of Decree) 51, 54.

Mistake.

See Bond 1.
Contract 23.
Court Fees 11.
Criminal Proceedings 18.
Declaratory Decree 14.
Estoppel 4.
Hindoo Law (Adoption) 39.
Limitation 31.
,, (Act IX of 1871) 81.
Mortgage 30.
Payment 2.
Practice (Review) 20, 21.
Practice (Suit) 23.
Privy Council 10.
Registration 6.
Revenue Settlement 2.
Small Cause Court 6, 31.
Special Appeal 8.
Sunnud 3, 4.
Talook 3.

Mitacshara.

See Ancestral Property 1, 2, 3, 4, 6, 7, 8, 12.
Custom 9.
Gift 11, 14, 15.
Guardian and Minor 10, 29.
Hindoo Law 4.
,, (Coparcenary) 11, 17, 19.
,, (Inheritance and Succession) 5, 8, 10, 21, 22, 26, 27, 31, 34, 41, 46, 50, 51, 52.
Hindoo Widow 1, 22, 33, 34, 39.
Illegitimate 8, 10.
Limitation (Act XIV of 1859) 18.

MITACSHARA (*continued*).

See Oudh Estates 8, 12, 18.
Partition 18, 23*a*.
Res Judicata 31.
Self-acquired Property 1.
Streedhun 1.

Mithila.

See Ancestral Property 1.
Guardian and Minor 27.
Hindoo Law (Adoption) 18.
" (Inheritance and Succession) 1, 2.
Hindoo Widow 10.
Self-acquired Property 1.

Mochulka.

See Pottah 5, 6.
Registration 13.

Mohunt.

See Certificate 6.
Endowment 1, 2, 3, 38, 39.

Mokurruree.

1. Where a zemindar sues to set aside a — deed set up by defendant, and to recover possession of the lands covered by the deed, it lies upon defendant to defeat that right by proving the grant of an intermediate tenure, and the case must be decided not on the defect of plaintiff's title, but on defendant's right to hold under a perpetual and hereditary tenure at a fixed rent. (P. C.) 2 P. C. R. 225 (12 W. R. P. C. 6; 12 Moo. 300; 2 B. L. R. P. C. 111); (P. C.) 2 P. C. R. 806 (19 W. R. 252).

2. Limitation does not begin to run in favor of a mokurrureedar against the zemindar until the latter has had notice that the former claims under a — grant. (P. C.) 2 P. C. R. 806 (19 W. R. 252).

3. Where a "— istemraree" tenure was held to be hereditary. (P. C.) 2 P. C. R. 818 (13 B. L. R. 124; L. R. I. A. Sup. 181); 3 P. C. R. 257 (25 W. R. 239; L. R. 3 I. A. 92; I. L. R. 1 Cal. 391).

4. In a suit by mortgagees under a zur-i-peshgee, not only for possession, but also for setting aside a — lease which was alleged to have been granted by the mortgagor prior to the mortgage and under which defendants had been in possession for some time in accordance with a Magistrate's order: *Held* that the *onus probandi* was on plaintiff in impeaching the validity of the —; but this having been done, and a strong *primâ facie* case made out, the burden was shifted, and it became incumbent on defendants to show that the — was granted before the zur-i-peshgee, and granted *bonâ fide* for a real consideration, and intended to be operative as between the mortgagor and the lessee. (P. C.) 3 P. C. R. 64 (23 W. R. 111).

5. Where a clause in the kubooleut of what was a — lease acknowledged a power in the Government to put an end to the lease at the end of one year, but the Government had not done so: *Held* that, although it was not properly a —, inasmuch as practically the Government could enhance the rent, it must be regarded, as long as it went on, as an hereditary lease, a mourosee pottah; and that as the interest of the grantor, which had not been determined by the Government, was an hereditary interest, there seemed no reason why, upon the construction of the pottah in question, it should be held to be limited to the life of the grantee. (P. C.) 3 P. C. R. 453 (L. R. 4 I. A. 223; I. L. R. 3 Cal. 210).

6. In a suit for enhancement, the defendants (*inter alia*) pleaded a — pottah executed on 9th October 1832 and purporting to bear the seal of one of the then maliks of the land and to be signed on behalf of all the maliks by A: *Held* that the pottah, though an authentic document, would not bind the maliks who did not affix their seals, nor those who claimed under them, and that it was not admissible in evidence, unless it was shown that A had a special or general authority to sign for them; and that the fact that the document was more than 30 years old gave rise to the presumption that the signature at the foot of it was in the handwriting of A, and that the pottah was executed by him. I. L. R. 3 Cal. 557.

7. Although a grant of a — lease in lieu of maintenance may be resumable by the grantor and his heirs, yet, if the grantor or any of his successors receives distinct notice of a claim on the part of the grantee to hold in perpetuity and not subject to resumption, and allows 12 years to go by without contesting such claim, he (such grantor or successor) will be barred for the time of his own enjoyment. I. L. R. 3 Cal. 793.

8. Mokurruree *Khurposh*. *See* Zemindaree 5.

9. In 1798 a — pottah of a portion of a zemindaree was granted to A at a consolidated jumma of Rs. 6 for the term of four years, and at a uniform rent of Rs. 25 from the expiration of that period, to be paid year after year. The pottah provided that the mokurrureedar should make improvements; that profits arising therefrom should belong to him, and not to the grantor; and that he should not dispose of any portion of the land granted without the permission of the grantor. No words of inheritance were used in the grant. The grantee died in 1875, when the heirs of the grantor sued to recover possession of the estate from the heirs and assigns of A. The defendants contended that the grant was transferable and hereditary; that A, his heirs, and assigns were entitled to it in perpetuity: *Held* that the grant was for the life of A only, and not in perpetuity. I. L. R. 5 Cal. 543.

10. The use of the word — alone in a lease raises no presumption that the tenure was intended to be hereditary, and, therefore, in order to decide whether a — lease is hereditary, the Court must consider the other terms of the instrument under which it is granted, the circumstances under which it was made, and the intention of the parties. *Ib.*

See Ejectment 3.
Endowment 21.
Escheat 2.
Limitation (Act IX of 1871) 97.
Mesne Profits 7.
Possession 5.
Relinquishment 5.
Res Judicata 28.

Money.

1. — paid under process of good decree. *See* Enhancement 18.

See Adjustment 1.
Attachment 11, 21.
Bond 3, 5, 6.
Breach of Trust 1.
Certificate 8.
Cheque.
Conditional Sale 2.
Cross Decree 1.
Deposit 1, 2.
Earnest Money.
Ejectment 6.
Evidence (Documentary) 4.
Execution of Decree 27.
Guardian and Minor 18.
Hereditary Office 8, 9.
Hindoo Widow 41, 42, 43.
Illegal Gratification 1.
Insolvency 5.
Interest 10, 19.
Jurisdiction 15, 52.
Letters of Administration 2.

MONEY (*continued*).

See Limitation (Act XIV of 1859) 12, 29.
„ (Act IX of 1871) 20, 46, 81.
„ (Act XV of 1877) 16, 19, 24, 25, 36, 39, 44, 48, 50.
Money Decree.
Municipal 4.
Partition 16, 17.
Plaint 1.
Principal and Surety 1, 3, 4, 9, 10.
Purchase-Money.
Purdah Woman 10.
Res Judicata 7, 17, 23.
Right to Light and Air 4.
Sale (for Arrears of Revenue) 4.
Small Cause Court 2, 29.
Stamp Duty 9, 12.
Title Deeds 1.
Toda Giras Huk 5, 6, 10.
Zur-i-peshgee 1.

Money Decree.

1. The obligee of a simple mortgage bond was only entitled, under Act XX of 1866 s. 53, to a —. Nothing passes to the auction-purchaser at a sale in execution of a — but the right, title, and interest of the judgment-debtor at the time of the sale. Where, therefore, a decree given under s. 53 declared the right of the obligee of a simple mortgage bond to bring to sale the hypothecated property, and such property was sold in execution of the decree, the auction-purchaser could not claim in virtue of the lien created by the bond to defeat a second mortgage. (F. B.) I. L. R. 1 All. 236.

2. So also where the holder of a simple mortgage bond obtained only a — on the bond, in execution of which the property hypothecated in the bond was brought to sale and was purchased by him, he could not resist a claim to foreclose a second mortgage of the property created prior to its attachment and sale in execution of his decree: *Held* further that the holder of the — in this case could not avail himself of a condition against alienation contained in his bond to resist the foreclosure. (F. B.) I. L. R. 1 All. 240. *But see* I. L. R. 4 Bom. 57.

3. An obligee under a bond giving him a charge upon lands, who sues for and obtains only a —, under which he himself purchases the land, the sole proceeds being sufficient to discharge the debt, cannot fall back on the collateral security for a debt which no longer exists. *Semble* that, even if the sale proceeds were not sufficient to discharge the debt, the obligee could not, according to the principle laid down in the foregoing ruling, avail himself of his collateral security to avoid a lease granted by the obligor after the date of the bond. I. L. R. 1 All. 433.

4. The purchaser of a simple — based on a bond hypothecating property does not merely by his purchase acquire a lien upon the property. I. L. R. 1 All. 446.

5. The fact that a — has been obtained on a bond by which property has been mortgaged, does not destroy the lien on that property. It is open to a plaintiff to establish his right on the bond as well as on the —. I. L. R. 4 Cal. 29.

6. Attachment and sale of a —. *See* Execution of Decree 36.

7. There is nothing in Act X of 1877 s. 210, or elsewhere in that Act, authorizing a Court to direct that the amount of a decree should be paid within a fixed time from its date. *Semble* that s. 210 is not applicable in a suit for the recovery of the amount of a bond debt by the sale of the *nankar* allowance hypothecated by such bond. I. L. R. 2 All. 649.

See Ancestral Property 8.
Decree 10.
Execution of Decree 9, 26, 36, 87.
See Instalments 2.
Jurisdiction 47.
Letters of Administration 2.
Limitation (Act IX of 1871) 46.
„ (Act XV of 1877) 10.
Mortgage 36, 38, 45, 46, 54, 69, 79, 80, 83, 86, 88, 100, 101, 105.
Principal and Surety 12.
Registration 17, 33.
Sale (in Execution of Decree) 32.
Under Tenure 3.

Mookhtar.

1. A mookhtarnamah was held to be invalid, there being no legal proof of its execution, and the whole of the transactions relative to the execution being of a very questionable character. (P. C.) 2 P. C. R. 83 (8 W. R. P. C. 22; 11 Moo. 268).

See Limitation 36.
Privy Council 11.
Purdah Woman 10.

Mortgage.

1. A mortgagee who is setting up a charge in his favor made by one whose title to alienate he knew to be limited, must prove the facts which embody the representations made to him of the alleged deeds of the estate and the motives influencing his immediate loan; but such proof must not be required from one not an original party, after a lapse of time and enjoyment and apparent acquiescence. Where also a charge is created by the substitution of a new security for an older one, and the consideration for the older one was an old precedent debt of an ancestor not previously questioned, the presumption will arise in favor of a consideration that binds the estate. (P. C.) 2 P. C. R. 29 (18 W. R. 81*n*; 6 Moo. 393).

2. Mode of taking and production of accounts when the defendant is mortgagee in possession. (P. C.) *Ib.*; (P. C.) 2 P. C. R. 190 (11 W. R. P. C. 19; 12 Moo. 159; 2 B. L. R. P. C. 44).

3. A mortgagee cannot sue a Hindoo lady (widow of the original mortgagor) under Act I. of 1845 s. 9, to obtain repayment from her personally of the money paid by him (mortgagee) to save the sale of the property for arrears of revenue. (P. C.) 2 P. C. R. 77 (8 W. R. P. C. 17; 11 Moo. 241). *See* 15 W. R. 329; 22 W. R. 411.

4. In a suit for redemption of a usufructuary —, interest was allowed to be calculated, under Reg. XV of 1793 s. 10, at 12 per cent. instead of 9 per cent. as expressed in the deed. (P. C.) 2 P. C. R. 190 (11 W. R. P. C. 19; 12 Moo. 157; 2 B. L. R. P. C. 44). *See* 16 W. R. 251.

5. The *onus probandi* is on a plaintiff who sues to set aside a — executed by him under which possession passed to the mortgagees, on the allegation that consideration had not passed to him. (P. C.) 2 P. C. R. 225 (12 W. R. P. C. 6; 12 Moo. 300; 2 B. L. R. P. C. 111).

6. Plaintiffs were purchasers of the equity of redemption in a portion of certain mortgaged premises which were sold in lots; and they brought this suit against the mortgagees who were also purchasers of the equity of redemption of several of the lots. They made the purchasers of the other lots parties to the suit, and sought to redeem their own portion of the estate and to recover possession of their own portion and the portion purchased by the purchasers other than the mortgagees on payment into Court of a sum sufficient to cover the — debt attributable to the said parcels. Mode of applying the whole of the — debt between the different mouzahs of the mortgaged estate in such a case pointed out. (P. C.) 2 P. C. R. 346 (14 W. R. P. C. 17; 13 Moo. 404). *See* 24 W. R. 47; 25 W. R. 388; I. L. R. 4 Cal. 72.

7. The principle that, when a creditor sues for his principal and interest (the latter being equal or more than, equal, at the time of the commencement of the suit, to the principal), he is not debarred from charging subsequent

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interest for the period during which he is kept out of his money by his debtor's resistance of the demand, is not applicable to a case in which a mortgagee in possession is not a party suing for the money, but the party resisting a claim to redemption and the final settlement of the account. (P. C.) *Ib.*

8. It is open to a mortgagor to deny that the consideration money, the receipt of which is formally acknowledged under his hand and seal, ever was advanced, the mortgage deed not creating any estoppel. (P. C.) 2 P. C. R. 386 (15 W. R. P. C. 14; 13 Moo. 551). *See also* I. L. R. 1 All. 403.

9. The interest of a mortgagee under a deed of conditional sale becomes absolute according to the terms of contract by the mere failure of the mortgagor to redeem within the stipulated period. (P. C.) 2 P. C. R. 410 (15 W. R. P. C. 35; 7 B. L. R. 136; 13 Moo. 560). *But see* 3 P. C. R. 198).

And the mortgagee has a right of entry immediately after default. 22 W. R. 90.

10. A decree for sale made by the Supreme Court in a suit for foreclosure of a — has no operation upon the title of a person in the Mofussil who was no party to the foreclosure suit. (P. C.) 2 P. C. R. 457 (16 W. R. P. C. 19; 14 Moo. 101; 8 B. L. R. 122).

11. A suit by a mortgagee against a *bonâ fide* purchaser under a judgment decree without notice of the —, founded on a title to enter into possession by reason of default, ought to be brought within 12 years after the commencement of the purchaser's possession. (P. C.) *Ib. See also* 22 W. R. 543.

12. In a suit to recover possession under a — made in the English form, limitation was held to count as against the mortgagee from the date of default, the pendency of a foreclosure suit not preventing limitation from running. (P. C.) 2 P. C. R. 480 (16 W. R. P. C. 33; 14 Moo. 144; 8 B. L. R. 104). *See* 22 W. R. 543.

13. Where appellants claimed to be entitled to redeem property held by respondents as mortgagees, and the latter claimed to hold as an *enam* free from the payment of Government revenue, and were found to have so held it since 1824, the Privy Council refused to disturb their title thus fortified by long enjoyment without clear and unmistakeable proof of the alleged —. (P. C.) 2 P. C. R. 501 (17 W. R. 8).

14. The Privy Council held a — to be not *bonâ fide* because it was not only necessary for, but in the power of, the mortgagee to produce better evidence than he had given to establish the reality and *bona fides* of the transaction. (P. C.) 2 P. C. R. 503 (17 W. R. 9).

15. Where it was contended that, according to an agreement, the mortgagee was entitled to the payment of the principal and interest on the debt, but that the payments of interest carried no interest themselves, the intention of the parties was construed to be that the interest might be set off against the rents and profits and interest on the same, which he might receive over and above the interest due to him upon the debt, Reg. XV of 1793 s. 7 not applying to such a case. (P. C.) 2 P. C. R. 546 (17 W. R. 261; 10 B. L. R. 386; 14 Moo. 443).

16. The owner of an undivided share in a joint estate cannot, by mortgaging his share, affect the interests of the other sharers and their right to enforce a partition. (P. C.) 2 P. C. R. 942 (21 W. R. 233; L. R. 1 I. A. 106).

17. Remedy of the mortgagee when such partition is effected under Reg. XIX of 1814. (P. C.) *Ib.*

17*a*. Where the effect of a bond was held to create a simple —, and not a conditional deed of sale, and the proceedings taken under a decree and an order made thereon, by virtue of which the mortgagees obtained possession of the mortgaged property, were held not to operate so as to extinguish the right of redemption. (P. C.) 13 B. L. R. 205.

17*b*. The rule that a *bye-bil-wuffa* does not become absolute upon breach of the condition as to payment without proceedings for foreclosure, obtains in the Central Provinces of India. (P. C.) *Ib.*

18. Without some special agreement or some special custom, a mortgagee in possession should not retain both the usufruct and the interest, but the usufruct should be treated as in satisfaction of the interest on the —. (P. C.) 3 P. C. R. 15, 195.

19. Held that the clause in a — bond relating to sale was in the nature of a penalty, and that the plaintiff who, on a portion of the interest having come into arrears, sued for the full amount of the — money with interest for twelve years, the full period of the loan, was not entitled to enforce it only upon default in the payment of interest; also that the suit was not maintainable, either as an action for damages for the amount which plaintiff could have obtained by the sale, or on the bond itself. (P. C.) 3 P. C. R. 58 (23 W. R. 91).

20. The period of sixty years within which the law allows mortgagors to bring their suit cannot be diminished by any Court of justice on the ground of the laches of a party in the prosecution of his rights. (P. C.) 3 P. C. R. 61 (23 W. R. 99; 14 B. L. R. 386; L. R. 2 I. A. 48).

21. Where 42 per cent. per annum (the rate of interest agreed upon a —) was thought unjustly usurious, and 12 years' interest at the rate of 12 per cent. per annum was allowed with reference to s. 19 cl. 4 of the Punjab code. (P. C.) 3 P. C. R. 85.

21*a*. Under Act I of 1869 a suit for redemption was not barred where the instrument of — fixed a term within which the — might be redeemed, and such term did not expire before the 13th February 1856. (P. C.) L. R. 3 I. A. 85 (I. L. R. 5 Cal. 198).

21*b*. In a suit for redemption, the — deed dated 21st July 1840 having been lost, the Judicial Commissioner held that the *onus* lay, not upon the mortgagor to prove that the term did not expire before 13th February 1856, but upon the mortgagee to prove that it did: *Held* by the Privy Council that the burden of proof was *primâ facie* on the mortgagor, regard being had, as respects the *quantum* of evidence required, to the opportunities which each party might naturally be supposed to have of giving evidence. (P. C.) *Ib.*

22. Where a — deed, under which the mortgagee was in possession, provided for the payment of the balance before a day fixed, but not until that balance should have been ascertained by an account by the mortgagee, and the consequence of the breach of the obligation to pay the balance was a power to the mortgagee to become the purchaser of the property at a certain valuation: *Held* that there was no reason for presuming, at this distance of time, that the very special agreement contained in the deed was carried out between the parties according to its terms, the contemplated settlement of accounts being a necessary preliminary to the performance of that contract. (P. C.) 3 P. C. R. 198 (L. R. 2 I. A. 241; I. L. R. 1 Mad. 1).

23. The practice of the Madras and Bombay High Courts, in applying to mortgagees by conditional sale the practice of the English Courts of Equity of recognizing in the mortgagor a right of redemption notwithstanding expiry of time stipulated for foreclosure, as being in contrast with the mode of proceeding followed in Bengal, was condemned as unsatisfactory and calling for the interposition of the Legislature. (P. C.) *Ib. See* I. L. R. 2 Bom. 231.

24. Plaintiffs, as mortgagees, obtained a decree for possession upon their — deed against defendants as mortgagors. Though this decree gave plaintiffs no title to the land as against the prior mortgagees, it gave them a right and title as against the defendants, which right and title were not destroyed by the prior mortgagees subsequently turning plaintiffs out of possession. When, however, plaintiffs paid off the first —, their title, which had all along been a good title as against the mortgagors, was a valid title as against every one, and the mortgagors had no right to enter upon the possession of their land. The entry of the mortgagors upon that land, to which the plaintiffs had obtained a right under the second —, gave them a cause of action against the mortgagors from the period of such entry. (P. C.) 3 P. C. R. 357 (L. R. 4 I. A. 15).

25. In giving plaintiffs a decree for possession, their Lordships reserved the question as to the amount for which they were entitled to hold possession of the land under the —, until the defendants sought to redeem the land. (P.C.) *Ib.*

26. Considering that the duties of the Zillah Judge in the matter of foreclosure are of a ministerial nature, and considering the vast importance to mortgagors of the notification by the Judge required by Reg. XVII of 1806 s. 8, and the consequences which follow if they do not redeem within the prescribed time, the Privy Council was

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of opinion that the service of it should be established by evidence in a suit brought to enforce the foreclosure, and that the finding of the Judge is not *primâ facie* evidence of the fact of service, shifting the *onus* of proof upon such an important point, and relieving the mortgagee from giving affirmative proof of the due performance of a condition precedent to foreclosure. (P. C.) 3 P. C. R. 480 (L. R. 5 I. A. 18 ; I. L. R. 3 Cal. 397).

27. The year during which the mortgagor may redeem his property runs, not from the date of the perwannah or the issuing of it by the Judge, but from the time of service. (P. C.) *Ib.*

28. Service upon some of the mortgagors would be insufficient to warrant the foreclosure of the whole property or any of it where it is sought to foreclose the whole estate as upon one — against all. (P. C.) *Ib.*

29. The mortgagee, when he seeks to foreclose, must discover and serve notice on the persons who are the then owners of the estate, not excepting purchasers who have not taken possession. (P. C.) *Ib.*

30. Held that a — by way of conditional sale on failure to pay by instalments by way of compromise to save a village from sale in execution of a decree, which included future interest on the amount decreed when the decree was silent as to future interest, was not invalid on the ground of concealment of facts, and misrepresentation under definition 1 s. 18 Act IX of 1872, nor illegal and void under s. 23 cl. 2, nor voidable under s. 20 ; but that there was a mistake of law in supposing that execution could be issued for future interest although not awarded by the decree, and that (except as to one addition to the amount for which the village was ordered to be sold in execution, which addition was disallowed as contrary to Act VIII of 1859 s. 249) the plaintiff had not gained an unconscionable advantage by the transaction, as there was nothing to prevent him from recovering by action as damages interest upon a judgment which could not be levied in execution. (P. C.) 3 P. C. R. 514 (L. R. 5 I. A. 78 ; I. L. R. 3 Cal. 602).

31. Without affirming the broad proposition that every purchase by a mortgagee of a sub-tenure existing at the date of the — must be taken to have been made for the benefit of the mortgagor so as to enhance the value of the mortgaged property, and make the whole, including the sub-tenure, subject to the right of redemption upon equitable terms, it was held in this case that the mortgagor was entitled to redeem the estate upon paying the purchase-money of certain *birt* tenures of which the mortgagee claimed a sub-settlement, *plus* the original-money. (P. C.) 3 P. C. R. 637 (L. R. 6 I. A. 145 ; I. L. R. 5 Cal. 198).

32. The effect of a sale of a mortgaged estate under a power of sale is to destroy the equity of redemption in the land, and to constitute the mortgagee exercising the power a trustee of the surplus proceeds, after satisfying his own charge, first for the subsequent incumbrances, and ultimately for the mortgagor. The estate, if purchased by a stranger, passes into his hands free from all the incumbrances. There seems to be no reason why the second mortgagee, who might have bought the equity of redemption from the mortgagor, should not, equally with a stranger, purchase the estate when sold under a power of sale created by the mortgagor. (P. C.) *Ib.* *See post* 61, 68.

33. There is no ground for the contention that a mortgagee cannot relieve himself from the statutory obligation of filing accounts under Reg. XXXIV of 1803 ss. 9 and 10. (P. C.) 3 P. C. R. 708 (L. R. 7 I. A. 51 ; I. L. R. 2 All. 593).

34. Where, at the time when a — of the malikhana interest of certain talookdars was made, the law by which the contract was governed limited the rate of interest to 12 per cent., and the — provided that the mortgagee should take the income of the malikhana in lieu of interest and so be saved from having to account for them, crediting every harvest with a certain amount of the income as interest at 12 per cent., and taking the remainder of the malikhana (a fixed sum) as an allowance for the costs of collection : *Held* that the stipulation was not in the nature of a contract for interest, and that there was no evasion thereby of the law, or any contract to give usurious interest. (P.C.) *Ib.*

35. *Quære* whether, if the surplus malikhana, *ultra* the interest, were a fluctuating instead of a fixed sum, the mortgagee would not be bound to file the statutory accounts. (P. C.) *Ib.*

36. A mortgagee is not entitled, by means of a money decree obtained on a collateral security, such as a bond or covenant, to obtain a sale of the equity of redemption separately. To allow him to do so would deprive the mortgagor of a privilege which is an equitable incident of the contract of —, *viz.* a fair allowance of time to enable him to redeem the property. (O. J. Ap.) I. L. R. 1 Cal. 387. *See also* 101 *post.*

37. A suit to establish a right to sell mortgaged property in satisfaction of a — debt, is not barred by limitation. 25 W. R. 189 (I. L. R. 2 Cal. 41).

38. Where a decree on a — bond is against the mortgagor generally, coupled with a declaration of the lien, the decree-holder may proceed either against the person and his property, or against the mortgaged property; though whether such a course will be allowed in any particular case is a matter for the discretion of the Court executing the decree. 25 W. R. 421 (I. L. R. 2 Cal. 213).

39. The — of the property of a minor made by the manager appointed under Act XL of 1848 is invalid, unless the sanction of the Court has been previously obtained under s. 18 of the Act. 25 W. R. 449 (I. L. R. 2 Cal. 283).

The power of a *de facto* guardian to — property of his ward must be determined with reference to the above Act. I. L. R. 4 Cal. 33.

40. Where the manager was sued, as representing the minor, by the mortgagee, and made no defence to the suit, and the property was sold under the decree so obtained to the mortgagee, by whom it was again sold to a third person who knew that the manager had executed the — in that capacity: *Held* that the decree did not protect the mortgagee who purchased at the execution-sale, nor her vendee, from suit by the minor for recovery of the property. *Ib.*

41. The provisions of Reg. XVII of 1806 s. 8, that a copy of the mortgagor's application to foreclose is to be served with the Judge's *perwanna*, are imperative and not merely directory. Where the evidence fell short of proof that a copy of such application was served with the *perwanna* of the Judge: *Held* that such failure of proof was fatal to the plaintiff's suit to recover possession of the mortgaged premises after the expiration of the year of grace. I. L. R. 2 Cal. 311.

42. Where the plaintiffs, second mortgagees who had foreclosed their mortgagor's equity of redemption, sued for possession of the mortgaged property, and alleged that their mortgagor's equity of redemption had been finally foreclosed by the first mortgagee after due proceedings and expiry of the year of grace without redemption, and that they were therefore entitled to absolute possession, and failed on the ground that notice of foreclosure had not been duly served: *Held* that they were not entitled to a decree as mortgagees for possession subject to their accounting to the mortgagors, that being relief different from that prayed for in their plaint. *Ib.*

43. Where the plaintiff had advanced to the first defendant Rs. 38,000, and had agreed to advance Rs. 27,000 more, the whole Rs. 65,000 to be secured by a — of the first defendant's immoveable property, and the first defendant had deposited with the plaintiff the title-deeds of his immoveable property for the purpose of enabling him to get a — deed prepared, and had agreed to execute such — deed on payment to him by the plaintiff of the balance of the Rs. 65,000, and the title-deeds were afterwards returned by the plaintiff to the first defendant for the purpose of enabling him to clear up certain doubts as to his title to some of the premises comprised in the deeds, and such deeds were not subsequently returned by the first defendant, nor were others deposited in lieu thereof, and the balance of the Rs. 65,000 was not paid by the plaintiff to the first defendant: *Held* that there was an equitable — to the plaintiff to secure Rs. 38,000 so far as concerned the property comprised in the deeds. (O. J.) I. L. R. 1 Bom. 237.

44. The reason for the rule of equity, that a purchaser of property, though for valuable consideration, and taking the legal estate, yet with notice of a prior incumbrance, purchases subject to such incumbrance, is that such purchaser is acting *malâ fide* in taking away the right of the prior incumbrancer by getting the legal estate, while knowing that a prior purchaser has the right to it. But a purchaser for valuable consideration, without notice of the prior right

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of a third person, is not guilty of, or party to, a fraud upon the rights of a prior purchaser. The Courts of Equity therefore will not interfere with his right to the possession, enjoyment, and disposal of the property; and though, subsequently to his purchase, he may become aware of the prior incumbrance, yet he has the right to convey to a subsequent purchaser, who, at the time of such subsequent conveyance, has notice of the prior right of the third person; and such subsequent purchaser will take the property free from the incumbrance, for neither is he guilty of any fraud in accepting what his vendor had a right to convey, nor would the *bonâ fide* purchaser without notice be able, otherwise, freely and completely to dispose of the property which he innocently acquired. On the same principles, any subsequent purchaser, however remote, though having notice, must be protected. Where therefore the second defendant, having notice of the plaintiff's equitable —, purchased from one who, also with such notice, had purchased from a *bonâ fide* purchaser for value without notice: *Held* that the second defendant held the property free from the equitable —. (O. J.) *Ib.*

45. Plaintiff claimed under a — dated 27th November 1871 for Rs. 50, which was neither registered nor accompanied with possession. Defendant claimed under a — dated 17th March 1873 for Rs. 150, which was both registered and accompanied with possession. Defendant had no notice, express or constructive, of the plaintiff's previous —. In 1873 plaintiff sued the mortgagor for a money claim unconnected with the —, and on 20th February 1874 obtained a decree for Rs. 100. In execution of this money decree, the mortgaged property was attached and sold by the Court at the plaintiff's instance, the defendant becoming the purchaser for Rs. 86 on the 17th September 1874. An unregistered certificate of the Court's sale, bearing date 29th October 1874, was issued to defendant. In 1874 plaintiff brought a suit on his — (to which suit defendant was not a party) and obtained a decree (the date of which did not appear in evidence) for possession of the mortgaged property against the mortgagor. In endeavouring to enforce that decree, plaintiff was obstructed by defendant on 15th January 1875: *Held* that, if it was passed subsequently to the Court sale of the mortgaged property to the defendant on 17th September 1874, the decree for possession was valueless, as neither the title to, nor the possession of, the mortgaged property was then vested in the mortgagor. *Held* further that, as defendant had no notice of the plaintiff's — when plaintiff caused the Court's sale to be made under his money decree, or that the sale was made subject to the plaintiff's —, it was incumbent on plaintiff, as such money judgment-creditor, to inform defendant when bidding for the right, title, and interest of the judgment-debtor in the mortgaged property, that the judgment-creditor (plaintiff) held a — on the same property, and intended to enforce it, especially as the — was neither registered nor accompanied with possession, and that the plaintiff having omitted so to inform the defendant, was estopped from enforcing his own — against the defendant. I. L. R. 1 Bom. 314.

46. The plaintiff in 1874 sued on a *San* — dated 15th November 1861, *i.e.*, five months before the passing of Act V of 1862 (Bombay), to recover a sum of money by sale of the mortgaged property, which formed part of a *bhag* in a Bhagdaree village, which *bhag* the defendant had purchased at an execution-sale subsequently to the date of the — : *Held* (assuming s. 1 of the Act to apply) that it does not bar the right of action; that therefore a Civil Court would be bound to make a decree, even though it might anticipate that s. 1 of the Act would stand in the way of the execution of that decree. *Semble* that, after a decree has been passed against a portion of a *bhag*, the Collector might recognise such portion as a division of the *bhag*, if assured that justice required that the decree should be executed. *Held* however that no retrospective operation can be given to s. 1 so as prejudicially to affect existing rights. The words "attachment or sale by the process of any Civil Court," used therein, were intended to prevent attachment and sale under simple money decrees, and not to prevent the sale of mortgaged property in satisfaction of a valid —. I. L. R. 1 Bom. 581.

47. Held also that the purchaser at an execution-sale buys only the right, title, and interest of the debtor, burdened with all valid liens, such as a previous *San* —. *Ib.*

48. In the case of a — of the kind prevailing in a certain part of Malabar called a *pernartham* —, when the mortgagor redeems, the mortgagee is entitled (before restoration of the mortgaged land) to be paid its market value at the time of redemption, not the amount for which the land was mortgaged. I. L. R. 1 Mad. 57.

49. The plaintiffs, averring that their ancestor had mortgaged three villages to the defendant's ancestors in 1842 for Rs. 2,500, putting the mortgagees in possession, sued to recover 15 biswas of each village, asserting that the — debt had been redeemed from the usufruct. The defendants, admitting the proprietary title of the plaintiff's ancestor to the villages, alleged, as to 10 biswas of each village, that they were sold by him to their ancestors in 1842 for Rs. 1,250; and, as to the other 10 biswas of each village, that they were subsequently mortgaged by him to their ancestors for Rs. 14,000, borrowed by him from them for the purpose of defending a suit arising out of the previous sale, which sum had not been satisfied from the usufruct: *Held* that the burden of proving the — of the 10 biswas of each village of which the defendants alleged the sale lay on the plaintiffs, and that the plaintiffs, having failed to prove the averments on which their suit was based, were not entitled to any relief in respect of that portion of the property in suit of which the defendants admitted their possession as mortgagees. (F. B.) I. L. R. 1 All. 194.

50. The plaintiffs in this suit claimed, as the heirs of G, possession from the defendants of certain lands which D had mortgaged to the defendant's ancestor, alleging that the — debt had been satisfied from the usufruct. The defendants denied the title of the plaintiffs to redeem, asserting also that the — debt had not been satisfied. The Court of first instance held that the plaintiffs were entitled to redeem, but dismissed the suit on the ground that the — debt had not been satisfied: *Held* that the defendants were entitled to appeal. I. L. R. 1 All. 266. *See also* (F. B.) I. L. R. 2 All. 497.

51. Distinctness in the description of property mortgaged is essential. A general hypothecation is too indefinite to be acted upon. Under Act IX of 1872 s. 29, an agreement is void if its meaning is not certain or capable of being made certain; and under Act I of 1872 s. 93, where the language of a deed is, on its face, ambiguous or defective, no evidence can be given to make it certain. Therefore, where certain persons, describing themselves as residents of J, gave a bond for the payment of money in which, as collateral security, they charged "their property" with such payment: *Held* that they did not thereby create a charge on their immoveable property situated in J. I. L. R. 1 All. 275.

52. Where the whole of a — debt was due to the persons claiming under the — jointly and not severally, and a person entitled only to one moiety of the debt foreclosed the — as to that moiety, and sued the mortgagors for possession of a moiety of their interests in the mortgaged property, in virtue of the — and foreclosure: *Held* that the foreclosure was invalid, and that the suits were not maintainable. I. L. R. 1 All. 297.

53. Mere silence on the part of a prior mortgagee on hearing that the mortgagor is mortgaging the property a second time is not such conduct as will amount to constructive fraud, and deprive him of his right to priority as against the second mortgagee. Neither does the mere fact that, being aware of the second —, he attests the execution of the — deed, amount to such conduct, where his knowledge of the contents is not shown. Where a prior mortgagee, however, attested the execution of the deed mortgaging the property a second time, and being aware of the contents of the deed, kept silence, and thus allowed the second mortgagee to think that the property was not encumbered, and to advance his money on the security of it, which the second mortgagee would not have done had he been aware of the existence of the prior —, such silence was held to be conduct which amounted to constructive fraud on the part of the prior mortgagee, and deprived him of his right to priority. I. L. R. 1 All. 303.

54. A conditional decree fixing a period for payment of money found to be due on — bonds entitling the mortgagor to redemption, though not claimable as of right by the

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mortgagor, who ordinarily should be ready at once with his money, is a proper and judicious order passed by an Appellate Court where the Court of first instance determined the amount payable under the — but failed to fix any time in its decree for the payment of such amount. I. L. R. 1 All. 344.

55. The possession of *seer* land by conditional mortgagees must be treated as the possession of the mortgagors ; *Held* accordingly that where the mortgagees of certain proprietary rights in a mehal, being in possession of such rights, purchased the same at an auction-sale, the *seer* land included in the proprietary rights was held by the mortgagors at the time of the auction-sale, within the meaning of Act XVIII of 1873 s. 7, and that after the sale, in virtue of that section, they became entitled to a right of occupancy in the *seer* land. I. L. R. 1 All. 448.

56. Inasmuch as the mortgagors had a right of occupancy in the *seer* land, they could not be treated as trespassers for ejecting the mortgagee's tenant and taking possession ; but inasmuch as, instead of giving notice to the mortgagees of their intention to avail themselves of such right and to enter on the *seer* land as tenants, at the same time offering to pay such rent as might, having regard to the above section, be properly payable by them, they entered on the *seer* land and ousted the mortgagee's tenant, they rendered themselves liable for mesne profits. I. L. R. 1 All. 448.

57. The purchaser of a share in a mortgaged estate, who has paid off the whole — debt in order to save the estate from foreclosure, can claim from each of the other mortgagors a contribution proportionate to his interest in such property, but he cannot claim from the other mortgagors collectively the whole amount paid by him. I. L. R. 1 All. 454.

58. Where a person mortgaged his proprietary rights in a mehal, which rights consisted of certain lands occupied by him, covenanting to give the mortgagee possession for the purpose of cultivation and the payment of Government revenue, and being at liberty to redeem the lands at any time at the end of the month Jeyth, such person could not resist a claim on the part of the mortgagee for possession of the lands on the ground that he had a right of occupancy in the lands under Act XVIII of 1873 s. 7, such section not being applicable, and contemplating something more than a mere temporary transfer of proprietary rights. I. L. R. 1 All. 459.

59. Where land which has been conditionally sold is subsequently mortgaged, the second mortgagee, being the mortgagor's "legal representative" within the meaning of that term in Reg. XVII of 1806 s. 8, is entitled, on foreclosure proceedings being taken by the conditional vendee, to the notice required by that section, and cannot be deprived by the conditional vendee of the possession of the land notwithstanding foreclosure, where no such notice has been given to him. I. L. R. 1 All. 499.

60. In a suit to recover possession of certain lands founded on the allegation that the defendants had obtained possession of them from the plaintiffs as usufructuary mortgagees and that the — debt had been satisfied from the usufruct of the lands, the Lower Court, although it found that the — debt had not been satisfied as alleged, gave the plaintiffs a decree for possession conditional on the payment of the balance of the — debt. *Held* that, inasmuch as the defendants had never rendered any accounts, and inasmuch as no agreement had been made between the parties as to the amount at which the profits of the lands should be estimated, it was impossible for the plaintiffs to have ascertained before suit what sum, if any, was due by them ; and seeing that whether such decree was altered or not, the plaintiffs might immediately pay the balance of the — debt and demand possession, it was unnecessary to interfere with such a decree. I. L. R. 1 All. 524.

61. A sale, without the intervention of a Court of justice, of mortgaged lands situate in the Mofussil of Bombay, under a power of sale contained in an indenture of — in the ordinary English form, is valid if due notice be given to the mortgagor of the mortgagee's intention to sell, and the sale be fairly conducted. Position of a mortgagee selling under his power of sale, explained. I. L. R. 2 Bom. 1. *See* 32 *ante and post* 68.

62. Where a deed, which on the face of it was described as a —, stated that the grantee was already in possession under a previous — by the grantor, and was under the second deed to receive the profits in liquidation of interest so far as they would go, and that the grantor was not to be liable to repay the principal money or such balance of interest (if any) as might accrue upon it, unless he adopted a son, and the grantee, unless that event happened, was to enjoy the property conveyed in right of purchase for the sum (principal and interest) due to him : *Held* that the deed was a sale liable to be converted into a —, and not a — liable to be converted into a sale. I. L. R. 2 Bom. 113.

63. A creditor holding a — on the lands of his debtor does not necessarily surrender that —, or lower its priority, by taking a subsequent — including the same lands with other lands, for the same debt. Whether the earlier — becomes merged and extinguished or not is a question of intention. I. L. R. 3 Cal. 307.

64. An agreement recited that A had executed a bond in favor of B, in which it was declared "I promise to repay the whole principal with interest, in the month of Falgoon 1271 F. S., and till payment of the amount I will not transfer any property by conditional sale or —." The bond contained no further proviso declaring invalid future alienations of the lands belonging to A, in the manner specified in the bond : *Held* that the instrument did not operate as a — by A. I. L. R. 3 Cal. 336.

Where a person stipulates generally not to alienate his property, he does not thereby create a charge on any particular property belonging to him. I. L. R. 2 All. 449.

65. Where a transaction was held to be a conditional sale, and not a —, and where consequently the grantor had no right to redeem the lands after the expiration of the period fixed for the payment of the consideration. I. L. R. 2 Bom. 231.

66. The rule "once a — always a —" is still in force in the Bombay Presidency, with regard to a — containing a clause of conditional sale, whether executed before or after 1858. *Ib.*

67. The general law and usage of the country respecting a *gahan lahan* —, and generally the alienation of immoveable property, discussed. *Ib.*

68. When property mortgaged is situated in the Mofussil, but the parties to the — are resident in Bombay, and the instrument of — is in the English form, the parties must be held to have contracted according to English law, and to be entitled to enforce their rights according to that law. In such a case the mortgagee can exercise a power of sale contained in the — deed, and cannot be restrained from exercising such power, merely because the mortgagor has filed a suit for redemption. The mortgagor can only stay the sale *pendente lite* by paying the money due into Court, or by giving *primâ facie* evidence that the power of sale is being exercised in a fraudulent or improper manner, contrary to the terms of the —. I. L. R. 2 Bom. 252. *See ante*, 32, 61.

69. A, having a simple — bond which was specially registered, obtained a summary decree under the provisions of the Registration Act, and attached the lands under — to him. Prior to A's decree they were sold to B. After such sale, A, under his attachment, sold the right, title, and interest of the mortgagor which he himself purchased. A now sued the mortgagor and B to enforce his — lien against the mortgaged properties : *Held* that the suit could not be mantained. *Quære* whether Act VIII of 1859 s. 7 would not be an answer to the suit as full relief might have been given in the summary suit. I. L. R. 3 Cal. 363. *See* I. L. R. 5 Cal. 928.

70. The value of the right, title, or interest created by a — is estimated by the amount of the principal money thereby secured. I. L. R. 2 Bom. 353.

71. Held, in a suit by the obligee on certain bonds, that the bonds created a — only of the profits of the mouzah in question and not of the mouzah itself, and accordingly that they did not entitle the obligee to a decree for the sale of the mouzah. I. L. R. 1 All. 611.

72. By a written instrument, duly registered, T agreed, in consideration of the recognition by his two brothers of his rights in the joint and undivided property of the three brothers, not to sell, transfer, or — his share except to them ; and should he desire to dispose of it, to dispose of it to them for a certain sum. In breach of this agreement

MORTGAGE (*continued*).

he gave a usufructuary — of his share to L: *Held*, in a suit by L to enforce the —, that the agreement was valid, and that the — was bad as against T's brothers. I. L. R. 1 All. 618.

73. A suit to redeem a usufructuary — of certain lands was instituted in the Moonsiff's Court. After the suit had been admitted and the parties called on to produce evidence, the Moonsiff ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in suit being beyond the jurisdiction of a Moonsiff: *Held* that, under Act VIII of 1859, the Moonsiff's order was appealable to the Lower Appellate Court, and, under Act X of 1877, the Lower Appellate Court's order to the High Court. I. L. R. 1 All. 620.

74. Where the question in such a suit is not only whether the property has been redeemed out of the usufruct, but whether the property and the right to redeem belongs to the plaintiff, and the value of the property exceeds Rs. 1,000, such suit is not cognizable by a Moonsiff. *Ib.*

75. The three senior members of an undivided Hindoo family (the remaining member of which had disappeared), setting forth a ground of necessity, executed to the plaintiff, in November 1870, a —, duly registered, of a piece of land which formed part of the family estate. Certain judgment-creditors of the absent member subsequently attached and sold his share in the said land under their decree. The plaintiff's undivided son purchased it, and in 1872 resold his right, title, and interest to the defendant's father without disclosing the fact of his father's —, but without any active fraud on the part of himself or his father to suppress the fact from the knowledge of his purchaser. In 1874 the plaintiff obtained a decree upon his — and attached the land. In a suit by the plaintiff to establish his right as against all the land included in his —: *Held* that the — being, under the circumstances, a valid one, the sale of the absent son's share was subject to the lien created thereby, which lien was not disturbed by the purchase and subsequent sale of the share by the son of the mortgagee. The origin of the son's title was stated in the deed of sale to the new purchaser, who, by the fact of its being a sale of a *share*, was put upon enquiry. I. L. R. 2 Bom. 650.

76. The mere want of disclosure, by the plaintiff's undivided son, of his father's — was not enough to create an estoppel against his father seeking to establish his claim under the —. *Ib.*

77. A registered — without possession has priority over a subsequent registered sale and conveyance with possession. I. L. R. 2 Bom. 662.

78. By a duly registered deed, D mortgaged land to plaintiff with power of sale. On default made by D plaintiff brought a suit for a sale of the mortgaged land; but pending the suit D sold the land to defendant, who registered his conveyance and entered into possession. Plaintiff subsequently obtained a decree, and at the execution-sale became himself the purchaser. He now sued to recover possession from defendant: *Held* that plaintiff was entitled to recover. His right as mortgagee included the right of bringing to sale the property as it subsisted at the date of the —. The property having been so brought to sale, the purchaser acquired a right free from any created subsequently to the — and subject to it. I. L. R. 2 Bom. 662. *See* I. L. R. 4 Bom. 83.

79. On 14th July 1876, B obtained a decree against D directing D to pay the amount advanced upon a — of D's lands within 6 months, or, in default of payment, the lands to be sold with liberty to B to bid at the sale. Default having been made, the lands were sold on 21st June 1877, and B became the purchaser. At the time of the sale the lands were in the occupation of D's tenants, under an agreement to give to D a moiety of the crops. On 11th December 1877, P, another judgment-creditor of D, attached the crops on those lands which had been cut and stored by D's tenants since the date of the sale: *Held* that, by the sale to B, all right, title, and interest of D, including his right to the moiety of the crops in the hands of his tenants, passed to B, and no residual right remained in D on which P's execution could operate, the crops not having been actually carried away and appropriated by D. I. L. R. 2 Bom. 670.

80. In 1861 J mortgaged certain lands to the defendant, who in 1864 sued upon the —, and obtained a decree for sale. The decree remained unexecuted by the defendant. In 1869 the lands were sold in execution of a money-decree against J, and the plaintiff became the purchaser. Thereupon the defendant attached the land in execution of the decree obtained by him in 1864. The Court found that the — of 1861 was not a *bonâ fide* —. In a suit for possession, it was held that the plaintiff was entitled. The decree obtained in 1864, being based upon a colorable —, gave the defendant no claim as against a subsequent *bonâ fide* purchaser for value. What was purchased by the plaintiff at the execution-sale in 1869 was the *real* interest of J in the lands in question, not his interest as diminished by a fictitious derogation arising out of a sham transaction. I. L. R. 3 Bom. 30.

81. A and B respectively, at different times, purchased portions of a property on which there was a —. On the mortgagee obtaining a decree against the property, B paid off the entire debt and brought a suit against A for contribution: *Held* that he was entitled to recover, notwithstanding in the deed of sale to B there was an undertaking by B that he would discharge all the liabilities of the mortgagor, including the — on the property. I. L. R. 4 Cal. 369.

82. A mortgagee who is in possession of the mortgaged property under the — is in possession "on his own account" within the meaning of Act VIII of 1859 s. 230 and Act X of 1877 s. 332. I. L. R. 2 All. 94.

83. On 26th March 1872, A mortgaged to B certain properties for Rs. 12,000. On 9th May 1872, A, to secure a further advance of Rs. 24,000 made to him by B, executed a second — to B of the same and certain other property. On 29th July 1873, B served A with notice to foreclose the properties mortgaged by the first deed. On 23rd March 1874, and before the expiration of the year of grace, a portion of the properties subject to both mortgages was sold at a revenue auction-sale subject to existing encumbrances, and C became the purchaser. C thereupon, to protect the interests he had bought at the sale, purchased in the name of D, a trustee, all the interest of B in both mortgages, and after the expiration of the year of grace, filed, in the name of himself and D, a suit to declare his absolute right to the foreclosed properties, and afterwards filed another suit against A for a money-decree on the bond in the second —: *Held* that C being owner of the property subject to both mortgages, and as such liable to contribute proportionately to the payment of both, could not foreclose the first —, and then sue for the whole debt due upon the second. *Quære* whether it would be equitable for C to foreclose the first —: *Held* further that the bringing of the second suit had the effect of reopening the foreclosure proceedings, and that the Court could not now make a decree in the whole case. I. L. R. 4 Cal. 475.

84. It is settled law that in the case of Kanam and Otti mortgages it is not competent to the mortgagors to redeem before the arrival of the appointed time. I. L. R. 2 Mad. 45.

85. If, in the case of any —, the period for redemption is postponed to a fixed date by special agreement, effect should be given to such agreement. *Ib.*

86. M, B, and N held mouzah D in equal one-third shares, and M also held a share in mouzah A. On 3rd January 1863, M and B mortgaged their shares in mouzah D to L to secure a loan. On 16th March 1870 M, B, and N mortgaged D to R to secure a loan of Rs. 600, and on the same day, by a separate deed, they mortgaged mouzah D, and M mortgaged his share in mouzah A to R to secure a loan of Rs. 1,600. On 8th December 1875 L obtained a decree for the sale of the shares of M and B in mouzah D for the satisfaction of the — debt due to her. On 18th April 1878 R obtained a decree for the realization of the — debts due to him by the sale of mouzah D and M's share in mouzah A. On 23rd October 1876, the shares of M and B in mouzah D were sold in execution of L's decree, and were purchased by R. A portion of the purchase-money was applied to satisfy L's decree, and the balance of it was deposited in Court. Instead of applying to the Court to pay him this balance in execution of his decree dated 18th April 1876, R attached and obtained payment of such balance in execution of a money-decree which he held against M and B.

MORTGAGE (*continued*).

On 20th June 1877, R, in execution of his decree dated 18th April 1876, brought to sale N's one-third share in mouzah D, and became its purchaser. On 20th July 1877, R, in execution of a money-decree against M, brought to sale his share in mouzah A, and became its purchaser. In a suit by N against R, in which he claimed that the sum due by him under the two mortgages dated 16th March 1870, and the decree dated 18th April 1876, might be ascertained, and that, on payment of the amount so ascertained, the sale of his one-third share in mouzah D might be set aside, and such share declared redeemed: *Held* that the sale of N's share could not be set aside; and that, if it were shown that the sum realized by the sale of his one-third share in mouzah D exceeded the proportionate share of his liability on the two mortgages, he was entitled to recover one moiety of such excess as a contribution from mouzah A. I. L. R. 2 All. 116.

87. As it appeared that there was such an excess, the Court gave N a decree for a moiety of such excess together with interest on the same from the date of the sale of N's share at the rate of 12 per cent. per mensem, and further directed that, if such moiety together with interest were not paid within a certain fixed period, N would be at liberty to recover it by the sale of the share in mouzah A, or so much thereof as might be necessary to satisfy the debt. *Ib.*

88. The decree in a redemption suit directed plaintiff (the mortgagor) to pay the — money and interest to defendant, and directed defendant to pay plaintiff the costs of the suit: *Held* that plaintiff was entitled to set-off the amount of his taxed costs against the — money which he was liable to pay under the decree, notwithstanding any claim that defendant's attorney might have against defendant in respect of defendant's cost of suit. (O. J.) I. L. R. 4 Cal. 742.

89. L, a Hindoo, mortgaged the dwelling-house of his family, such dwelling-house being ancestral property. In a suit against L's mother and wife to enforce the —, brought after L's decease: *Held* that the — could be enforced. I. L. R. 2 All. 141.

90. *Held* in this case that the defendants, by reason of their interest as sub-mortgagees of the whole 4 anna share under the first — made to R, and as purchasers under the decree they obtained against him of his interest under the first —, were entitled to possession of the property as mortgagees in preference to the plaintiffs, who had only obtained an assignment of the interest of R under the second — made to him. I. L. R. 2 All. 142.

91. Where a creditor obtains a decree against his debtor, and in execution puts up for sale, and himself becomes the purchaser of, certain property of his debtor, which is already under — to another, and such other has, previous to the decree and sale, commenced a suit on his — bond (although such suit has not proceeded to a decree), such judgment-creditor purchasing *pendente lite* only obtains the right and interest of the mortgagor in such property, *viz.* the equity of redemption, and does not acquire the property free from the incumbrance created by the debtor. I. L. R. 4 Cal. 789.

92. In 1869 A mortgaged her share in a zemindaree to B. In 1870 she granted a *putnee* lease of the property to C, who transferred it to D. Subsequently A made a gift of the property to E, and in 1872 E sold the land so given to F who thus became the owner of the *putnee* and zemindaree rights of the property formerly belonging to A. In 1873 A brought a suit against E (to which F was not a party) on his — bond, and obtained a decree for the sale of the mortgaged property. At the sale the property was purchased by G (the son of D). F then brought a suit for rent against G and obtained a decree. G then brought this suit to have it declared that he was no longer liable to pay rent, and to establish his zemindaree rights, claiming a refund of the money paid under the rent decree: *Held* that G had bought the entire estate which A and B could jointly sell, and not merely the rights and interests of A as they stood at the time of the sale, and that he was therefore entitled to a decree declaring that he was no longer liable to pay rent to F. I. L. R. 4 Cal. 817.

93. By the terms of a usufructuary — the mortgagor accepted the liability on account of any addition that might be made to the demand of the Government at the time of settlement. During the currency of the — tenure the mortgagees, averring that they had to pay a certain sum in excess: *Held* that, inasmuch as no settlement of accounts was contemplated or was necessary under the deed of —, and such deed did not contain a provision reserving the adjustment of any sums paid by the mortgagees in excess of the amount of the Government demand at the time of the execution of such deed to the time when the — tenure should be brought to an end, the suit was not premature and could be entertained. I. L. R. 2 All. 193.

94. Plaintiff as purchaser at an execution-sale sued to recover land in possession of defendant. Defendant alleged that he had bought the land from the widow of the previous owner by whom it had been mortgaged, and that he (defendant) had paid off the —. The previous owner had left a minor son. The Lower Courts passed a decree for the plaintiff, on the ground that the sale by the widow to the defendant was invalid, as she had not obtained a certificate of administration to her husband under Act XX of 1864: *Held* that the defendant had a lien upon the land for the amount of the — debt which he had paid, and that the plaintiff could not set aside the sale to the defendant without refunding the amount secured by the lien. I. L. R. 3 Bom. 234.

95. The usufructuary mortgagee of certain lands sued the mortgagor for the money due under the —. The mortgagor alleged that the mortgagee had committed waste and was liable to him for compensation which he claimed to set off: *Held* that, under Act X of 1877 s. 111, the amount of such compensation could not be set off. I. L. R. 2 All. 252.

96. Where a — of land situated partly in the District of Shahjehanpore in the N. W. P. and partly in the District of Kheri in Oudh was made by conditional sale, and the mortgagee applied to the District Court of Shahjehanpore to foreclose the — and render the conditional sale conclusive in respect of the whole property, and that Court granted such application: *Held* that, according to Reg. XVII of 1806 s. 8, where mortgaged property is situated in two Districts, an order of foreclosure relating to the whole property may be obtained in the Court of either District, that the circumstance that Oudh was in some respects a distinct Province from the N. W. P. did not take the case out of the operation of that ruling, inasmuch as Reg. XVII of 1806 was in force in Oudh as well as in the N. W. P. at the time of the foreclosure proceedings. I. L. R. 2 All. 313.

97. In a suit to compel the defendant to advance Rs. 1,800 or thereabouts to the plaintiffs, the unpaid balance of a sum of Rs. 3,000 which defendant agreed to advance on — and for which a — was executed and delivered to the defendant: *Held* that the Court ought not to make a decree for specific performance of such agreement. I. L. R. 2 Mad. 79.

98. On 15th July 1864 two undivided brothers executed a — of their joint property to the plaintiff for Rs. 500, and on 8th January 1868 they executed another — of the same property for Rs. 1000 to the defendant, who registered it under Act XX of 1866. In August 1871 a suit was brought against the brothers by the plaintiff on the — of 1864, and a decree for the sum due was made in October 1871, directing that, if the sum due was not paid within two months, the mortgaged property should be sold. In March 1872 the property was sold in execution of the above-mentioned decree and bought by the plaintiff, who was duly put into possession. In 1871 a suit was brought against the brothers on the — of 1868 by defendant; a decree was made similar to that in the above-mentioned suit, a sale of the property was had, and it was bought by defendant. Plaintiff was thereupon dispossessed and referred to a regular suit, and defendant was put into possession. This suit was then brought by plaintiff, the first mortgagee and purchaser, to eject defendant, the second mortgagee and purchaser, and the Lower Appellate Court making a decree in favor of plaintiff, defendant filed the second appeal: *Held* that the — of 1864 did not require to be registered in order to maintain its priority over the — of 1868; that plaintiff having bought the rights and interests of the mortgagors under a sale held prior to the sale to defendant, the mortgagors had no right or interest to sell to defendant; but that as the purchase by plaintiff was subject to the — to defendant, and as defendant was not

Mortgage (*continued*).

a party to plaintiff's — suit, defendant's right as mortgagee was not affected by the sale to plaintiff, though effect could not be given to that right in the present suit. I. L. R. 2 Mad. 108.

99. In a suit by a second mortgagee against his mortgagor and a third mortgagee, asking for an account and sale, the Court directed an account to be taken, not only of what was due to the plaintiff, but also of what was due to the third mortgagee. (O. J.) I. L. R. 5 Cal. 101.

100. P and his partners mortgaged certain immoveable property to plaintiff on 11th October 1869. They had then no title to the property, but they subsequently acquired one by purchase on 29th June 1871. On plaintiff demanding that P and his partners should make good the contract of — out of the interest they had acquired, the matter was referred to arbitrators, who, on 26th December 1873, made an award empowering plaintiff to sell the mortgaged property in satisfaction of his debt. The award was presented in Court by plaintiff on 23rd January 1874, and was filed by the Court on 23rd February 1874. Meanwhile, on 14th February 1874, the property was attached in execution of a money decree obtained by a creditor of P and his partners against them. On 15th April it was sold by auction and purchased by defendant. In a suit brought by plaintiff to recover possession of the property, both the lower Courts rejected his claim, on the ground that P and his partners had no right to the property when they mortgaged it to plaintiff: *Held* by the High Court on second appeal, reversing the decrees of the lower Court, that the defendant as purchaser under a money decree could not defeat the plaintiff's right as mortgagee to sell the property in satisfaction of his debt; also that the presentation in Court of the award obtained by plaintiff was equivalent to the presentation of a plaint for the specific performance of the contract of —, and that the proceedings consequent thereon constituted a *lis pendens*, during which a mere money-decree-holder could not, by any proceedings which he might take, defeat the object of plaintiff's application to the Court to file his award. I. L. R. 4 Bom. 34.

101. Although the mere taking of a money decree for a — debt does not extinguish the lien, still, when the mortgagee proceeds to satisfy such decree by the sale of his security, the interests of both himself and his judgment-debtor in the said security pass to the auction-purchaser. The particular nature of the right acquired by the purchaser at the sale does not depend on the form of the decree on which the mortgagee has proceeded to satisfy his judgment-debt. What the mortgagee really seeks when he proceeds to sell, whether under a decree for sale or a simple money decree, is to obtain satisfaction out of his security, in fact to enforce his lien; and although the proceeding may be in execution of a money decree only, he cannot retain his lien for enforcement *quâ* mortgagee, if the debt be not discharged by a second sale of the same property. I. L. R. 4 Bom. 57. *See also* 36 *ante*.

102. By two deeds, dated respectively 22nd February 1868, and 7th September 1872, and duly registered, A mortgaged the lands in dispute to B for a term of years which expired in 1880. On 10th October 1873, A executed a *razinama* in favor of B relinquishing all his right in the said lands, and B next day executed a *kuboolcut* to Government for the lands, which thenceforward were entered in B's name. Previously to the second — and *razinama* to B, *viz.* on 21st March 1870, A had by a duly registered deed mortgaged the same lands to the plaintiff, who in 1874 brought a suit against A upon his — and obtained a decree, under which he sold the mortgaged property, and became himself the purchaser thereof. Before and at the time of the institution of this suit, B was in possession of the mortgaged land, but was not made a party to the suit. In 1877 B sold the land to C by a duly registered deed. In a suit brought by the plaintiff against B and C to recover possession of the land so purchased by him, as above mentioned, at the sale in execution of his own decree: *Held* that B's possession at the date of the plaintiff's suit upon his — was sufficient to put the plaintiff on enquiry, and to constitute legal notice to him that the equity of redemption was at that time vested in B, and it was therefore the plaintiff's duty to have made B a party to the suit brought by him against A, who had then alienated the equity of redemption to B; and not having done so, the plaintiff could not rely, in support of his own title, upon a purchase under his own irregularly-obtained decree, and could not, therefore, stand in a better position as against B than if his original suit had been properly constituted, *i.e.* he was bound to give B an opportunity of redeeming his —. I. L. R. 4 Bom. 83.

103. A mortgaged a fourteen-annas share in a certain mouzah to B. B obtained a decree on his — bond. Subsequent to this decree B bought from A a two-annas share in the mouzah, but at a later period re-sold the share to A. In execution of another decree B had obtained against A, the twelve-annas share in the mouzah belonging to A was put up for sale and purchased by B; B next applied for execution of the decree he had obtained on the — bond, seeking to sell the two-annas share which remained in the mouzah as part of the property mortgaged to him: *Held* that so long as A had only a twelve-annas share of the property in his possession, B's security was of necessity reduced to that amount; but on A's again becoming the owner of the whole fourteen annas, B had an equitable right to demand that the fourteen annas should be held subject to his —. I. L. R. 5 Cal. 253.

104. In a suit for possession between two purchasers, who had bought the same property at two several auction-sales under decrees obtained on two several — bonds: *Held* that no question could arise as to which — was prior in point of time, but that the real question to be decided was which of the parties could prove a prior title to possession. I. L. R. 5 Cal. 265.

105. A, on 11th March 1868, took a — bond of certain property, and obtained a money-decree on the bond on 23rd January 1869. Under this decree the mortgagor's interest was put up for sale, and purchased by A on 29th April 1870. B, on 3rd November 1868, took a — bond on the same property, and obtained a decree thereon on 31st May 1869. Under this decree the mortgagor's interest was sold, and purchased by B on 22nd April 1870. B took possession of the property on 18th May 1872. In a suit by A for recovery of possession: *Held* that B was entitled to retain possession as against A, although his own interest might be merely that of a trustee for the mortgagor, and might be subject to A's — lien, if he took proper proceedings to enforce it. I. L. R. 5 Cal. 269.

106. The technical term "consideration" implies that the person to whom the money is paid, himself limits or extinguishes his interest in the land in consideration of such payment. Such limitation or extinction (if there can be said to be any) as results from the payment on account of the — debt, is the legal consequence of such payment, and not the act of the mortgagee. The payment reduces the sum due at the time on the —, and thus modifies the account between the mortgagor and mortgagee. But it does not operate to limit or confine within narrower limits the right or interest of the mortgagee in the land, which is simply to have the payment of the principal and interest secured on the mortgaged premises by some one or other of the remedies available for that purpose. I. L. R. 4 Bom. 235.

107. Z mortgaged in 1859 certain immoveable property, being joint ancestral property, for a term of five years, giving the mortgagee possession of the mortgaged property. In 1861 Z sold this property to the mortgagee, whereupon Z's sons sued their father and the mortgagee, purchaser, to have the sale set aside as invalid under Hindoo law, and in August 1864 obtained a decree in the Sudder Court setting aside the sale. The mortgagee, purchaser, remained, however, in possession of the property as mortgagee. In May 1867, Z having sued the mortgagee for possession of the property on the ground that the sale had been set aside as invalid, the High Court held that Z could not be allowed to retain the purchase-money and to eject the mortgagee, purchaser, but must be held estopped from pleading that the sale was invalid. In November 1867, one K having caused the property to be attached and advertized for sale in execution of a decree which he held against Z and his sons, the mortgagee objected to the sale of the property on the ground that Z and his sons had no saleable interest in the property. This objection was disallowed by the Court executing the decree, K purchasing them. In 1878 K sued, as the purchaser of the equity of redemption, for the redemption of the — of 1859: *Held* that K was entitled to redeem the property; that the mortgagee not having con-

MORTGAGE (*continued*).

tested in a suit the order dismissing his objection to the sale of the property in execution of K's decree, he could not deny that K had purchased the rights and interests remaining in the property to Z and his sons; that the mortgagee had no lien on the property in respect of his purchase-money; that, it being stipulated in the deed of — that the mortgagee should pay the mortgagor a certain sum annually as *malikhana* and the mortgagee not having paid such allowance since the date of the sale, the plaintiff was not entitled to a deduction from the — money of the sum to which such allowance amounted. I. L. R. 2 All. 455.

108. M and S executed an instrument in favor of K and G in the following terms, "We, M and S, declare that we have mortgaged a house situated in Ghazeabad, owned and possessed by us, for Rs. 300, to K and G, for two years; that we have received the — money, and nothing is due to us; that we have put the mortgagees in possession of the mortgaged property; that eight annas has been fixed as the monthly interest, in addition to the rent of the house, which we shall pay from our own pockets; that we promise to pay the aforesaid sum to the mortgagees within two years, and redeem the mortgaged property; that, if we fail to pay the — money within two years, the mortgagees shall be at liberty to recover the — money in any manner they please:" *Held*, in a suit upon this instrument to recover the principal sum advanced by the sale of the house, that the instrument created a — of the house as security for the payment of such principal sum. (F. B.) I. L. R. 2 All. 528.

109. Where all the proprietors of an estate joined in mortgaging it, and the mortgagee subsequently purchased the share in such estate of one of the mortgagors, thereby breaking the joint character of the —, and one of the mortgagors sued to redeem his own share and also the share of B, another of the mortgagors: *Held* that he was entitled to redeem his own share, but he could not redeem B's share against the will of the mortgagee. I. L. R. 2 All. 565.

110. L executed a bond in favor of S in which he mortgaged, amongst other property, a village called Chand Khera, as security for the payment of certain moneys. He subsequently sold such village to A, concealing the fact that it had been mortgaged to S. On this fact coming to A's knowledge, he threatened L with a criminal prosecution, whereupon L proposed to S in writing to substitute the security of a share in a village called Kelsa, which he alleged was his property, for the security of Chand Khera. S accepted this proposal by a letter in which he referred to L's proposal in terms. It subsequently appeared that the share in Kelsa did not belong to L but to another person. S having sued upon his bond, claiming to enforce thereunder a lien upon Chand Khera, A set up as a defence to the suit that S had agreed to substitute Kelsa for Chand Khera in the bond, producing S's letter as evidence of the agreement: *Held* that such letter operated as a release, and should therefore have been stamped and registered. *Held* also that L's fraud vitiated S's agreement to substitute the security of Kelsa for the security of Chand Khera in the bond, and that S was entitled, notwithstanding A might have purchased the latter property in good faith, to the enforcement of the lien created thereon by the bond. I. L. R. 2 All. 554.

111. In 1870 M granted a certain person a lease of a certain zemindaree share for a term of years at an annual rent, L, as the lessee's surety, hypothecating a mouzah called A as security for the payment of such rent. In 1871 L gave B a bond for the payment of certain moneys, hypothecating mouzah A as security for the payment. In 1872, and again in 1873, M obtained a decree in the Revenue Court against his lessee and L his surety for arrears of rent. In execution of the decree of 1872 M caused L's rights and interests in mouzah A to be put up for sale, and purchased them himself. In 1874 B sued L and M to enforce his lien on mouzah A. M defended this suit on the ground that he was the holder of a prior lien on the property. The Court gave B a decree in 1875, holding that he was entitled to an order for the sale of the property, but that it would be competent to M to sue to enforce his lien, and that, when he did so, the purchaser under B's decree would have the option of discharging the first incumbrance. The property was accordingly put up for sale in execution of B's decree, and was purchased by B himself. In 1876 M sued L and B to enforce his lien on the property, claiming to recover by the sale thereof the amount of the arrears of rent awarded by the decrees of 1872 and 1873, together with the costs awarded him in the Revenue Court, and interest: *Held* that the decree of 1875 did not preclude M from claiming to enforce his lien on mouzah A, nor was his claim affected by the circumstance that he had brought to sale in execution of the decree of the Revenue Court the rights and interests of L in that mouzah. All that was then sold was the equity of redemption, which was sold to satisfy the money-decree held by M. No doubt the proceeds of the sale would after satisfaction of the costs of the decree go *pro tanto* to the satisfaction of the sums secured by the first incumbrance; but M by selling in execution the mortgagor's equity of redemption did not forego his incumbrance. (F. B.) I. L. R. 2 All. 582.

112. *Held* also that M could not enforce his lien for the recovery of the costs incurred by him in the Revenue Courts, as the surety bond did not provide for the payment of such costs; that he could enforce his lien for the recovery of interest, as that bond did provide for the payment of interest; and that the moneys realized by the sale of the equity of redemption of the property in execution of the Revenue Court's decree of 1872 must be applied, in the first place, in satisfaction of the costs of the suit in which that decree was made, and then in satisfaction of the arrear sued for in that suit, or the balance of that arrear, and of the arrear sued for in the second suit, with interest at the rate agreed upon in the surety bond from the date of the accrual of those arrears until realization. (F. B.) *Ib.*

113. K made over to G, from whom he had borrowed certain moneys, certain land on the oral condition that, if such moneys were not repaid within two or three months, such land should become G's absolutely: *Held* that, as there was no deed of conditional —, Reg. XVII of 1806 was not applicable to G, and he became the owner of such land after the expiry of three months from the date on which it was made over to him, in consequence of the amount of the loan not having been repaid to him. I. L. R. 2 All. 633.

114. *Quære* whether in Kanara, a — without possession can be sustained against a subsequent purchase from the mortgagor with possession. I. L. R. 4 Bom. 459.

115. Plaintiffs sued for possession of certain immoveable property, alleging that they had mortgaged such property to defendants and that the — debt had been satisfied out of the profits of the property. Defendants set up a defence which raised the question of the proprietary right of plaintiff to the property. The value of the mortgagee's interests in the property was below Rs. 5,000; the value of the mortgaged property exceeded that amount. On appeal to the High Court from the original decree of the Subordinate Judge in the suit, it was contended that the appeal from that decree lay to the District Court, and not to the High Court: *Held* that the "subject-matter in dispute," within the meaning of Act VI of 1871 s. 22, was the — and the mortgagee's rights under it, and that, the value of this being only Rs. 2000, the appeal should have been preferred to the District Court. I. L. R. 2 All. 778.

116. The proprietors of a talooka and mehal called B, assessed with revenue at Rs. 6800-4-7, to which certain lands which had been gained by alluvion appertained, which lands had been formed into a separate mehal, and assessed with revenue at Rs. 88, mortgaged it in these terms: "We agree mutually to — the said talooka B, and accordingly after mortgaging and hypothecating the whole of the mouzahs original and appended, yielding a *jumma* of Rs. 6,800-4-7, along with all original and appended rights, water and forest produce, high and low lands, cultivated and uncultivated lands, etc., etc., and all and every portion of our proprietary, possessionary, and demandable rights, without excepting any right or interest obtained or obtainable, etc." Subsequently, the mehal talooka B, "together with original and attached mehal and all the zemindaree rights appertaining thereto," was sold in execution of a decree enforcing the —. The auction-purchaser subsequently contracted to sell the "entire talooka B, *jumma* Rs. 6,800-4-7," but afterwards refused to perform the contract and was sued for its specific performance. The plaint in this suit stated that the subject-matter of the contract was the "entire talooka B, *jumma* Rs. 6,800-4-7," and the decree which the purchasers obtained for the

MORTGAGE (*continued*).

specific performance of the contract referred to its subject-matter in similar terms: *Held*, in a suit by the purchasers for the possession of the alluvial mehal, that the terms of the — were sufficiently comprehensive to include that mehal, and that it was not intended by the entry of the *jumma* of mehal B, exclusive of the *jumma* of the alluvial mehal, to exclude the latter from the —, the entry of the *jumma* being merely descriptive. Also that the alluvial mehal passed to the auction-purchaser at the auction-sale, under the words "attached mehal." Also that the sale to plaintiffs passed the alluvial mehal, the words "the entire talooka B" being sufficient to include it, the entry of the *jumma* of Mehal B in the sale-contract, plaint, and decree being merely descriptive. I. L. R. 2 All. 787.

117. In March 1864, the owner of an estate mortgaged it as security for the payment of certain moneys. Subsequently portions of such estate were purchased by the plaintiff and the defendants at an execution-sale. Subsequently again the mortgagee sued the mortgagor and the plaintiff for the — money, claiming to recover it by the sale of the portion of such estate purchased by the plaintiff. Having obtained a decree, the mortgagee caused a portion of such portion to be sold in the execution of the decree. In order to save the remainder of such portion from —, the plaintiff satisfied the judgment-debt. The plaintiff then sued the defendants for contribution: *Held* that assuming that the mortgagee, by not including the defendants in his suit upon the — bond, had put it out of his power to proceed at law by another suit on the basis of the same bond against the properties in the possession of the defendants as purchasers, it did not follow that the plaintiff's equitable right to recover a fair contribution from the defendants on the ground of his having paid the whole debt due to the mortgagee was thereby invalidated. I. L. R. 2 All. 807.

118. The proprietor of certain immoveable property mortgaged it in July 1875 to K and in September 1875 to L. In October 1878, he sold the property to K. In November 1878, L obtained a decree on his — bond for the sale of the property. The suit in which L obtained this decree was pending when the property was sold to K. K sued L to have the property declared exempt from liability to sale in the execution of L's decree on the ground that the — to L was invalid, it having been made in breach of a condition contained in K's — bond that the mortgagor would not alienate the property until the — debt had been paid: *Held* that the purchase by K of the equity of redemption did not extinguish his security, it being his intention to keep it alive, and that the purchase of the property by K while L's suit was pending did not prevent K from contesting the validity of L's —, so far as it affected him, on the ground that it was an infringement of the stipulation in the contract between him and the mortgagor. I. L. R. 2 All. 826.

119. In order to enforce a decree which establishes a — and directs a sale of the mortgaged premises in satisfaction of the —, it is not necessary to issue an attachment. If the decree contains, as it ought to contain, a direction for sale of the mortgaged premises, the proceeding under such a decree by attachment is unnecessary as well as expensive and dilatory. The direction for sale in the decree is in itself sufficient authority for the sale. That direction is founded on the specific lien or charge on the mortgaged premises created by the contract of —, and not on the execution clauses in the Codes of Civil Procedure. (F. B.) I. L. R. 4 Bom. 515.

120. A, the mortgagee, under a bond, of properties situated in districts B and C, sued in the B Court on his bond, and obtained a decree for the — money and interest, with a declaration that the decree should be satisfied by sale of all the mortgaged property. A had not obtained the permission of the High Court under Act VIII of 1859 s. 12, which was necessary to enable him to proceed against the property in the C district. Having attached and sold all properties comprised in his decree, situate within the jurisdiction of the B Court, A, under a certificate issued by such Court, obtained an order from the C Court, attaching lands included in his decree situate in that district. D intervened, on the ground that he had purchased the same property in execution of another decree of the C Court against the same judgment-debtor and the property was released from attachment. A then sued D and the mortgagor to enforce his — lien against the property in the C district: *Held* that the B Court had jurisdiction to give A a decree for the amount of the — money and interest, though it had not power to enforce the decree against the property in the C district; that the only effect of the decree was to change the nature of the original debt, which was a bond debt, into a judgment-debt for the — money and interest; and that though A could not enforce his lien against the property in the C district under the decree of the B Court, yet, as that property had been sold to a third person, D, he was at liberty to sue D to establish his lien for the — debt and interest. I. L. R. 5 Cal. 928.

121. Where a — of an estate is a joint one and there is no specification in it that any individual share or portion of a share of such estate is charged with the repayment of any defined proportion of the — money, but the whole estate is made responsible for the — money, it is not competent for the mortgagee to treat a sum paid by one of the mortgagors as made on such mortgagor's own account in respect of what might be calculated as his reasonable share of the joint debt and to release his share from further liability. Where, therefore, in the case of such a — the mortgagee, in taking foreclosure proceedings, exempted the person and share of the mortgagor so paying and proceeded only against the other mortgagors, and, the — having been foreclosed, sued the other mortgagors for the possession of their shares of such estate: *Held* that, the foreclosure proceedings being irregular, the suit was not maintainable. I. L. R. 2 All. 906.

122. A mortgagee brought a suit against the mortgagor to have a declaration of his lien over the mortgaged properties, and obtained a decree. He afterwards brought another suit against certain attaching creditors of his mortgagor, to have a declaration of his lien over certain surplus moneys in the hands of the Collector, who, previous to the institution of the first suit, had sold certain of the mortgaged properties free of all incumbrances for arrears of Government revenue: *Held* that the second suit was not barred under Act VIII of 1859 s. 7. *Held* also that the — decree declaring the lien over all the mortgaged properties covered the surplus sale proceeds then in the hands of the Collector, because these moneys must, as between the mortgagee and attaching creditors of the mortgagor, be taken to represent the mortgaged properties. I. L. R. 6 Cal. 142.

123. The doctrine of marshalling does not apply as between a mortgagee and attaching creditors of the mortgagor who hold mere money-decrees. *Ib.*

124. The plaintiff sued to redeem a —, alleging that it was made in A. D. 1821 for Rs. 25. The defendant admitted the —, but alleged that it was made in A. D. 1791 for Rs. 110, and contended that the suit was barred by limitation. The Subordinate Judge held that the — had been made for the amount and at the date alleged by the defendant, but that the suit was not time-barred as the mortgagor's title had been acknowledged by the mortgagee within the period of limitation. He, accordingly, made a decree for redemption on terms consistent with the plea of the defendant, but opposed to that of the plaintiff. In appeal, the Assistant Judge agreed with the first Court as to the merits of the case, but reversed its decree on the ground that the plaintiff was not entitled to succeed on a state of facts inconsistent with the case set forth in the plaint, observing that a plaintiff ought not to be allowed to change his cause of action: *Held* by the High Court on second appeal, that the decree made by the first Court in favor of the plaintiff, did not in any way proceed upon a cause of action different from that made in the plaint, and that the cause of action remained the same, viz., the right of the mortgagor to redeem from a mortgagee. I. L. R. 4 Bom. 584.

125. In a redemption suit a mortgagee is entitled to credit for reasonable costs of repairs, if he renders an account of rents and profits. *Ib.*

126. Where a claim is made under an alleged —, against a *bonâ fide* purchaser for value, and the defendant puts in issue the genuineness of the transaction, the *onus* is upon the plaintiff of proving *primâ facie* the *bona fides* as well as the execution of the —; and if the Court discredits the

Mortgage (*continued*).

plaintiff's witnesses as regards the *bona fides* of the transaction, it is at liberty to dismiss the suit, although the defendant gives no substantial evidence of fraud. I. L. R. 6 Cal. 268.

127. A mortgaged certain property to B agreeing amongst other things not to grant in *zur-i-peshgee* or — the property to any one so as to cause any difficulty in the realization of the money advanced under the — bond. A subsequently leased in *zur-i-peshgee* part of the property to C. B obtained a sale-decree against A on his —, and at the sale himself became the purchaser of the property. He then brought a suit against C to set aside the *zur-i-peshgee* lease, and to obtain khas possession: *Held* that the covenant in the — bond merely created a personal liability between A and B, and that the sale under B's — decree did not put an end to the *zur-i-peshgee* lease or affect the interests of the *zur-i-peshgeedars*: that B's suit against C was wrong in form; and that his proper course was to sue to have his right declared to sell the property in satisfaction of his — debt so as to give the *zur-i-peshgeedar* an opportunity of redeeming. I. L. R. 6 Cal. 317.

128. On 10th September 1863, A mortgaged a house to B, who registered the deed, but did not obtain possession of the premises. On 2nd July 1868, A mortgaged the same house to C, who registered the — deed and took possession of the premises. On 10th October 1868, B sued on his —, and obtained a decree against A's son who was a minor, and who was represented by his mother as his guardian. She, however, had obtained no certificate of administration under the Minors Act XX of 1864. On 17th December 1869, the mortgaged property was sold by the Court in execution of B's decree. The plaintiff bought it, and obtained a certificate of sale. On the plaintiff's attempting to take possession of the property the defendant, who was C's widow and heiress, resisted him, and he thereupon sued to recover it: *Held* that the plaintiff was entitled to possession. He stood at least in the same position as had been occupied by B, before the sale, and B as prior mortgagee had a superior title to that of defendant, who claimed under a subsequent deed. I. L. R. 5 Bom. 2.

129. Where mortgaged property is sold in execution of a decree in a suit brought and the —, the interest of the mortgagee, at whose instance the sale is made, is held to pass to the purchaser, and the mortgagee is estopped from disputing that such is the effect of the sale. *Ib.*

130. A mortgaged his land to B in 1861, which — was then registered, but the mortgagee did not enter into possession. Subsequently in 1866, A leased the same land to C. That lease was registered and C entered into possession. In 1867 B obtained a decree upon his —, and in execution attached and sold the mortgaged property. C, who had applied to have this attachment of the land removed and failed in his application, sued to establish his right under the lease and recover possession: *Held* that under the lease of 1866, he could only take what the mortgagor had to give him, *viz.* a lease subject to the registered —. I. L. R. 5 Bom. 5.

131. Where a decree is obtained upon his — by a mortgagee, and the mortgaged property is sold under the decree for the purpose of paying off the mortgages, the interest of both mortgagor and mortgagee passes to the purchaser. The mortgagee is estopped from disputing that such is the effect of the sale, so far as his interest is concerned, although the officer of the Court may only have described the sale as one of the right, title, and interest of the mortgagor. It is not the practice, in the Mofussil, to require the mortgagee to convey to the purchaser. The transfer takes place by estoppel. *Ib.*

132. U mortgaged certain immoveable property to A R. On U's death, A R, the mortgagee, brought a suit for foreclosure and sale against U's widow K, but did not make U's children (who were minors) parties to it. A R obtained a decree which directed satisfaction of the amount due under it out of the mortgaged property if it were not paid by K. K having failed to satisfy the decree, the mortgaged property was sold in execution to A R's brother, who obtained a certificate of sale to the effect that he had purchased "the right, title, and interest of K" in the mortgaged property. The auction-purchaser sold the property to plaintiff's father. Plaintiff now sued the auction-purchaser and U's widow and children to recover possession of the property with mesne profits: *Held* that the defect in the plaintiff's title arose from the circumstance that A R's suit was insufficiently constituted as to parties, both the sales having been found to be unimpeachable in all other respects; and that U's children were only entitled to the same relief which they would have obtained if they had been made parties to that suit, *viz.* the right of redeeming the property by paying off the —. I. L. R. 5 Bom. 8.

133. J brought a suit against G on a — bond. G having died before any decree was passed, his widow was substituted as defendant, and a decree was made against her *ex-parte*. The decree, however, was set aside after her death on the application of M, the sister of G, on the ground of want of due service of process upon G and his widow. M was substituted as defendant in the suit, and a new decree was made in her favor. In appeal this decree was reversed in favor of J, and in execution of the decree of the Appellate Court, the mortgaged property was sold and purchased by J, who obtained a certificate of sale to the effect that he had purchased all the right, title, and interest of G in the said property. Plaintiff (son of the original mortgagor G) filed the present suit against J and M, alleging that the — bond on which J had obtained his decree had been forged by J, and contending that the decree and subsequent proceedings under it did not affect his rights, inasmuch as he had not been made a party to them: *Held* that, on G's death, the plaintiff was his sole heir; that the equity of redemption in the mortgaged property vested in him; and that the inheritance was wholly unrepresented in the previous litigation, inasmuch as M was not appointed guardian of the plaintiff's person or administratrix of his estate, either under Reg. V of 1804 (Bombay) ss. 2, 19, and 23, or under Act XX of 1864; nor was she appointed his guardian *ad litem* in the — suit. I. L. R. 5 Bom. 14.

134. The general principle as to redemption and foreclosure is that, in the absence of any stipulation, express or implied, to the contrary, the right to redeem and the right to foreclose are co-extensive. I. L. R. 5 Bom. 22.

135. A — deed, dated 30th April 1870, stipulated that the mortgagor would pay the debt, with interest, within 10 years, and redeem the mortgaged property. In a suit instituted on 30th July 1877, for the redemption of the property, the mortgagee contended that the time had not expired. *Held* that the suit was unsustainable, because prematurely instituted, the mere use of the word "within" not being a sufficient indication of the intention of the parties that the mortgagor might redeem in a less period than ten years. *Ib.*

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Municipal.

1. A suit to set aside an order made on an appeal, under Act III of 1864 (Bengal) s. 33, to the — Commissioners against a rate-assessment, and to reduce the tax levied by them under that Act, on the ground that they have tried the appeal in an improper way and have exceeded their powers and acted contrary to the provisions of the Act, cannot be maintained in the Civil Courts. The decision of the Commissioners in such an appeal is absolutely final. I. L. R. 1 Cal. 409.

2. Act III of 1864 (Bengal), which vests public highways in — Commissioners for the purposes of the Act, does not by so vesting them give power to the — Commissioners, nor *a fortiori* to the Vice-Chairman alone, to stop up or divest such public highways. (Cr.) I. L. R. 2 Cal. 425.

3. Where the acts complained of by the plaintiff were committed by the Collector of a District, appointed — Commissioner under Act XXVI of 1850 s. 6, in his capacity of District Magistrate, and before Act VI of 1873 (Bombay) came into force: *Held* that a — Commissioner was an officer of Government within the meaning of Act XIV of 1869 (Bombay) s. 32, and ought to be sued in the Court of the District Judge, and not in that of a Subordinate Judge. *Quære* whether a suit under Act VI of 1873 (Bombay) must be commenced in the District Court. I. L. R. 1 Bom. 628.

4. Act III of 1871 (Madras) s. 85 is not a bar to a suit to recover money wrongfully levied as a tax, because such a so called tax had no legal existence. There is no provision in that Act for levying any tax described in s. 57 at all otherwise than by the prescribing of the machinery for its levy in ss. 58 to 61. If that machinery is not applied, no liability to pay such tax can arise. Where the — Commissioners of a town had not determined on the imposition of a tax of that description till 22nd April of the official year for which such tax was imposed, and the list of persons to be taxed for that year was not completed till 14th July of the same year, and notice to A of his assessment under such tax was not given him till 8th October in that year: *Held* that the tax had no legal existence, and that A was entitled to recover from the Commissioners money which they had collected from him as and for such so-called tax. A statute not only enacts its substantive provisions, but, as a necessary result of legal logic, it also enacts as a legal proposition everything essential to the existence of the specific enactment. In this case, the Legislature has imposed certain duties both upon the tax-payer and upon the Commissioners. Those duties (as to the tax-payer, enforceable by penalties) are to be performed at a particular time. There is here implied a "latent proposition of law" which is as clear and binding as if it had been explicitly declared. That proposition is that there shall be a legally sanctioned tax at the period at which the duties are to be performed. I. L. R. 1 Mad. 158. *But see* 11 *post*.

Municipal (*continued*).

5. Where, in a suit against a — Committee, the Magistrate of the district was employed as representing the Local Government, the Court refused to allow the plea that the Local Government had not been made a party to the suit in accordance with Act XV of 1873 s. 28. I. L. R. 1 All. 269.

6. A notice previous to suing a — Committee for a thing done by them under the above Act as required by s. 43, is only necessary where compensation is claimed for the thing done. *Ib.*

7. The plea that no notice was given as required by s. 43 cannot be taken for the first time in special appeal. *Ib.*

8. *Quære* whether a plea that the Local Government had not been made a party to a suit against a — Committee in accordance with s. 28 of the above Act can be taken for the first time in special appeal. *Ib.*

9. Non-compliance with notices issued by the Municipality under Act VI of 1873 (Bombay) s. 36 or s. 39 cl. 1 is not an offence punishable under the Act, as s. 74 cl. 1 of that Act does not apply to either of those provisions. The latter clause applies only to s. 39 cl. 2. (Cr.) I. L. R. 2 Bom. 527.

10. A — Corporation is not a public servant within the meaning of Act IV of 1877, and may therefore be prosecuted under the Penal Code without the sanction of the Government required by that section. (Cr.) I. L. R. 3 Cal. 758.

11. The Court of the District Moonsiff of Guntoor was held to have no jurisdiction to try a suit to recover the amount of a profession tax for 1876 levied by the — Commissioners of Guntoor on the plaintiff upon the supposition that he carried on business as an agent while in fact he carried on no such business. I. L. R. 2 Mad. 37. *But see* 4 *ante*.

12. In a suit by or against a Municipality constituted under Act VI of 1873 (Bombay), every individual Commissioner must be regarded as a party within the meaning of Act X of 1876 (Bombay) s. 15, and consequently such a suit cannot be entertained by a Subordinate Judge or a Judge of a Court of Small Causes, but can be entertained by the District Judge alone. I. L. R. 3 Bom. 146.

13. Where, after the notice required by Act XV of 1873 s. 43 had been left at the Office of a — Committee, such Committee were sued within three months of the accrual of the plaintiff's cause of action in the name of their Secretary, instead of in the name of their President, as required by Act XV of 1873 s. 40, and the plaintiff applied to the Court more than three months after the accrual of his cause of action to substitute the name of the President for that of the Secretary: *Held* that, by reason of such substitution, such suit could not be deemed to have been instituted against such Committee when such substitution was made, Act XV of 1877 s. 22 applying to the case of a person personally made a party to a suit and not to the case of a Committee sued in the name of their officer, and that such substitution when applied for should have been made. I. L. R. 2 All. 296.

14. *Semble*. Act XV of 1873 s. 43 contemplates suits in which relief of a pecuniary character is claimed for some act done under that Act by a Committee, or any of their officers, or any other person acting under their direction, and for which damages can be recovered from them personally, and not a suit against a Committee for a declaration of the plaintiff's right to re-construct a building which had been demolished by the order of such Committee, and for compensation for such demolition. *Ib.*

15. An agreement was entered into between the Commissioners of the town of V, and the defendant, farming the tolls of the town of V to the defendant for one year. The agreement was duly signed by the defendant but was not executed under seal by the Commissioners as required by Act III of 1871 (Madras). In a suit by the President on behalf of the Commissioners, brought after the expiry of the year, for a portion of the sum due to them by the defendant: *Held* that inasmuch as the plaintiff had fully performed all things to be performed on his part, and both parties had acted under the agreement though it was not formally executed by the Commissioners, and as the defendant had had the full benefit of the contract, it would be contrary to equity and good conscience to allow him to set up as ground of defence that there was no contract in point of law. I. L. R. 2 Mad. 104.

16. A suit was brought to recover from the — Commissioners of Madura the balance of a sum of money due for timber supplied under a contract duly made with them: *Held* that the plaintiff was entitled to sue on the breach of contract without giving notice, such a suit not falling under Act III of 1871 (Madras) s. 168. I. L. R. 2 Mad. 124.

17. Act III of 1864 (Bengal) s. 87 is applicable only in those cases where the plaintiff claims damages as compensation for some wrongful act committed by the — Commissioners or their officers, in the exercise, or honestly supposed exercise, of their statutory powers. The notice in the earlier part of the section is meant to give the defendant an opportunity of making some pecuniary amends for the wrong, without incurring the cost of litigation. (F. B.) I. L. R. 6 Cal. 8.

See Municipal Court.
 ,, Debentures.
 Public Thoroughfare 1.

Municipal Court.

See Jurisdiction 5, 7.

Municipal Debentures.

1. How the Privy Council decided a dispute as to interest on the Port Canning —. (P. C.) 2 P. C. R. 952 (21 W. R. 315; L. R. 1 I. A. 124).

Murder.

1. The prisoner was found guilty and sentenced, under Reg. IV of 1797, to transportation for life, for a — committed in 1861, before the Penal Code came into operation, and the case was sent up to the High Court to confirm the sentence. Reg. IV of 1797 was repealed by Act XVII of 1862, and that Act was wholly repealed by Acts VIII of 1868 and X of 1872: *Held* that the conviction was illegal; Act I of 1868 s. 6, which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation, not being applicable. (F. B. Cr.) I. L. R. 2 Cal. 225. *But see* I. L. R. 1 All. 599.

Quære whether a person convicted of — before 1st January 1862 has a right of reference under Reg. IV of 1797 s. 3. I. L. R. 1 All. 599.

2. On the trial by a jury of a person on a charge of —, the jury found the accused not guilty of the offence of —, but convicted him of culpable homicide not amounting to —. The Sessions Judge, although he disagreed with the verdict, declined to submit the case to the High Court under Act X of 1872 s. 263; but, by direction of the Local Government under s. 272, an appeal was preferred: *Held* that the appeal was duly made; that the judgment passed by the Court of Session, following the verdict of the jury acquitting the prisoner, is a judgment of acquittal within the meaning of s. 272; and that, there being an acquittal on the charge of —, the appeal lay. (Cr.) I. L. R. 2 Cal. 273.

3. Where the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot or very shortly afterwards: *Held* that there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence committed by the prisoner was not —, but culpable homicide not amounting to —. (Cr.) I. L. R. 1 Bom. 342.

4. Under Act X of 1872 s. 288, the High Court, to which a reference was made by a Court of Session for confirmation of a sentence of death on conviction of —, cannot, in the absence of an appeal, alter the conviction to one of culpable homicide not amounting to —, if it be of opinion that the evidence does not establish the former but the latter It must order a new trial for that purpose. (Cr.) I. L. R 1 Bom. 639.

5. Where the prisoners were tried on two charges of —

MURDER (*continued*).

and culpable homicide not amounting to —, and the opinion of the assessors was taken on both charges, but the Sessions Judge being of opinion that the evidence established the former charge, recorded a conviction and sentence for — only, the High Court, being of opinion, on a reference under Act X of 1872 s. 287, that the offence proved was culpable homicide not amounting to —, did not order a new trial *ab initio*, but directed the Sessions Judge to complete the trial by recording the finding on the second charge of culpable homicide not amounting to —. (Cr.) *Ib.*

6. L, C, K, and D conspired to kill S. In pursuance of such conspiracy L first, and then C, struck S on the head with a *lathee*, and S fell to the ground. While S was lying on the ground, K and D struck him on the head with their *lathees*: *Held* that inasmuch as K and D did not commence the attack on S, and it was doubtful whether S was not dead when they struck him, transportation for life was an adequate punishment for their offence. (Cr.) I. L. R. 2 All. 33.

7. The provocation contemplated by s. 300 Penal Code should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. (Cr.) I. L. R. 2 Mad. 122.

8. Excep. 5 to the above section refers to cases where a man consents to submit to the doing of some particular act, either knowing that it will certainly cause death or that death will be the likely result; but it does not refer to the running of a risk of death from which something which a man intends to avert if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated. (Cr.) I. L. R. 5 Cal. 31.

9. The above Exception is not applicable to the case of a premeditated fight, but points to a case of a different character, such as *suttee*. (Cr.) *Ib.*

See High Court 33.
Jurisdiction 44, 46.
Zanzibar 3, 4.

Mutation of Names.

See Evidence 13.
„ (Documentary) 10.
Karanavan 5.
Limitation (Act IX of 1871) 45.
Lumbardar 5.
Putnee 10.
Sale (in Execution of Decree) 36.

Mutiny Act.

See Execution of Decree 24.
Jurisdiction 48.

Mutwalee.

See Endowment 35.

Nagâr Vissa Vanias.

See Hindoo Law (Inheritance and Succession) 35.
Marriage 11.

Naib.

See Indemnity Bond 1.

Naikins.

1. Adoption by — cannot be recognised by Courts of law, and confers no right on the person adopted. An adoption by a woman pre-supposes a husband to whom she adopts as her representatives; and a naikin, while she remains a naikin, can have no husband. (O. J.) I. L. R. 4 Bom. 545.

2. Though daughters succeed to their mother's property, they cannot call for a partition during her life. That is a right peculiar to the son and grandson as joint owners by birth with the father of the ancestral estate. (O. J.) *Ib.*

3. The practices of an abandoned class like the — are no doubt a usage in one sense; but such usage is not a law by which the Courts in India are bound. Exposition of usage as a source of law; and of the functions of Courts of law and the Legislature respectively in giving effect to usage. Judicial decisions giving effect to usage in India, when and how far to be followed. (O. J.) *Ib.*

Narvadaree.

See Partition 14.
Sale (in Execution of Decree) 18.

Native Subject.

See Jurisdiction 44, 45.

Nattore.

1. Succession to the large and ancient Raj of —. (P.C.) 2 P. C. R. 608 (18 W. R. 221).

2. Construction of deeds of gift by the Maharanee Bhowanee. (P. C.) 2 P. C. R. 661 (18 W. R. 226; 11 B. L. R. 86).

Nazir.

See Attachment 14, 16.
Endowment 35.
Escape 1.
Guardian and Minor 35, 36.
Limitation (Act XV of 1877) 21, 23.
Principal and Surety 12.
Res Judicata 32.

Necessaries.

See Husband and Wife 6.

Necessity.

See Ancestral Property 1, 2, 3, 4, 8, 12.
Auction-Purchaser (Execution-Sale) 1.
Endowment 14.
Guardian and Minor 2, 10, 22, 24, 33.
Hindoo Law (Adoption) 39.
„ (Alienation) 1.
Hindoo Widow 3, 14, 19, 20, 65.
Manager 2.

Negligence.

1. In a suit for —, where it is possible that the Court may take one or more different views as to the proper measure of damages, the plaintiff must come prepared with evidence as to the amount of damages according to whichever view the Court may adopt; and if the evidence produced is applicable to one view only, the Court cannot give the plaintiff a retrial and allow him to remodel his case with fresh evidence under Act X of 1877 s. 566. That section is intended to provide for cases where some point has come to light in the Appellate Court, which has not been raised, or the importance of which has not occurred to the parties or to the Judge in the Court below. (O. J. Ap.) I. L. R. 5 Cal. 283.

See Bailment 5.
Causing Death by Rash or Negligent Act.

NEGLIGENCE *(continued)*.

Negotiable Instrument.

Nephew.

New Trial.

Non-Regulation Provinces.

Notice.

1. Notice to quit. *See* Landlord and Tenant 2.
2. Constructive notice. *See* Will 57.

Notification.

Novation.

1. Of bond. *See* Principal and Surety 2.

Nudum Pactum.

Nuisance.

1. In dealing with the civil rights of a subject under Act X of 1872 s. 518, it is incumbent on the Magistrate to limit the operation of his order to such reasonable time as may be necessary to enable him to hold a full and sufficient enquiry, as to whether the Act prohibited as likely to cause a breach of the peace is within, or is in excess of, the legal right of the person forbidden to do it; and, if necessary, to deal with the case under the other provisions of Act X of 1872, which enable him to meet cases of probable breach of the peace. (Cr.) I. L. R. 5 Cal. 132.

2. Where such an order on the face of it appears to have been made without jurisdiction, no subsequent explanation can make it good. (Cr.) *Ib.*

Nuzvid.

Succession to the zemindaree of —. *See* Zemindaree 3.

Oath or Affirmation.

Obscene Books.

Obstruction.

1. No suit for obstructing a public thoroughfare can be maintained in a Civil Court without proof of special injury. I. L. R. 1 All. 249.

2. Where special damage is caused to any person by an — placed upon a public thoroughfare, he is entitled to bring an action in the Civil Court for the purpose of having the nuisance abated, notwithstanding the provisions of Act X of 1872 s. 518 *et seq.* for summary proceedings before a Magistrate, and notwithstanding that he may be entitled to damages. (F. B.) I. L. R. 3 Cal. 20.

3. In all civil suits for the removal of a public — the plaintiff must show that he himself has suffered some particular inconvenience or injury resulting from the —. I. L. R. 2 Bom. 469.

4. Plaintiffs, who were Mahomedans, sued to establish their rights to carry *tabuts* in procession along a certain road to the sea, and alleged that the defendants (also Mahomedans) obstructed them in doing so. The plaint, however did not allege any personal loss or damage to the plaintiffs arising from the —. Both the Lower Courts found as a fact, that the road along which plaintiffs desired to carry their *tabuts* was a public road: *Held* in special appeal that plaintiffs could not maintain a civil suit in respect of such —, unless they could prove some particular damage to themselves personally in addition to the general inconvenience occasioned to the public. The mere absence of the religious or sentimental gratification arising from carrying *tabuts* along a public road, is not any such particular loss or injury as would be sufficient, according to English and Indian precedents, to sustain a civil action. Authorities as to what constitutes special damage sufficient to sustain a civil suit in such cases, referred to. I. L. R. 2 Bom. 457.

5. Before a Magistrate can make an order under Act X of 1872 s. 521 to remove an — from a path alleged to be a public thoroughfare, he must first, in a proceeding held under s. 532, have come to the conclusion that the path is open to the use of the public. (Cr.) I. L. R. 5 Cal. 875.

6. The only functions which a jury appointed under s. 523 can exercise, are to consider whether the order made by the Magistrate under s. 521 is reasonable and proper, it being no part of their duty to determine the rights of parties in property: *Held* therefore, that where a Magistrate, through a mistaken view of the law, ordered the removal of an — on a pathway under s. 521, and had further submitted this order to the consideration of a jury appointed under s. 523, before he had himself come to a conclusion whether such pathway was a public thoroughfare, the only course left open to him under such circumstances was to stay all proceedings initiated under s. 521, and take action under s. 532. (Cr.) *Ib.*

7. A Civil Court is not competent to set aside the order of a Magistrate made under Act X of 1872 s. 521, on the ground that such order was made without jurisdiction because the land in respect of which the order was made is private property, and not a thoroughfare or public place. A Civil Court can, however, irrespective of an order made under s. 521 by a Magistrate, try the question whether the land which formed the subject of such order is private property, and not a thoroughfare or public place, as between the parties to such suit and those who claim under them. I. L. R. 6 Cal. 291.

8. A person who on receipt of an order made by a Magistrate under Act X of 1872 s. 521, declaring the existence of a right of way over such person's lands, demands, under s. 523 of the same Act, the appointment of a jury to try whether such order was reasonable, is not by such action estopped from afterwards bringing a suit in a Civil Court, seeking to establish his right to the exclusive enjoyment of the same lands. *Ib.*

See Compensation 1.
Declaratory Decree 9.
Julkur 5.
Limitation (Act IX of 1871) 6.
„ (Act XV of 1877) 22.
Mortgage 5.
Public Thoroughfare 1.
Relief 2.
Right to Light and Air 1, 3.
Right to Water 1, 2.
Sale (in Execution of Decree) 21, 22.
Timber 2.
Vendor and Purchaser 7.

Official Assignee.

See Hoondee 11.
Insolvency 3, 4, 5, 6, 9, 12, 16.
Succession 2.

Official Trustee.

See Bill of Exchange 1.
Letters of Administration 2.
Will 43.

Onus Probandi.

1. The general presumption is in favor of the liability to assessment of land; and by Regs. XIX of 1793 and XIV of 1825 the — lies on a claimant to lakheraj to establish his title to exemption, not by inferences, but by positive proof of a grant made by some one to hold in lakheraj and by hereditary right prior to 12th August 1765, and that possession was *bonâ fide* taken under it, or an enjoyment of lands as such, and descendible to heirs at and since that time. (P. C.) 2 P. C. R. 8 (4 Moo. 466).

2. By Act VIII of 1859 s. 32, a plaintiff is bound to satisfy the Court that his right of action is not barred by lapse of time. (P. C.) 2 P. C. R. 225 (12 W. R. P. C. 6; 12 Moo. 300; 2 B. L. R. P. C. 111).

3. In a suit by a dur-putneedar, brought under Reg. II of 1819 s. 30 cl. 1, for a declaration that certain lands claimed by defendants as their *lakheraj* were held under an invalid title, and that they were the plaintiff's *mâl* lands liable to pay rent to him: *Held* that the *onus* was on plaintiff to prove a *primâ facie* case, *i.e.* that the land which he contends has since 1790 been converted into *lakheraj*, was once *mâl*; and that this burden is not met by the mere fact of the land being within the ambit of his estate. (P. C.) 2 P. C. R. 484 (20 W. R. 459; 14 Moo. 152; 8 B. L. R. 566). *See also* 24 W. R. 447, 25 W. R. 209.

The above principle applies to cases where the plaintiff is the representative of an auction-purchaser. 25 W. R. 209 (I. L. R. 1 Cal. 378).

4. Plaintiff brought a resumption suit in 1862 against A, in respect of the lands in dispute in this case, upon the ground that she was holding them by an invalid lakheraj title, and obtained a decree. After some years plaintiff brought the present suit against B, who derived her title through A, to have the rent assessed. B pleaded, by way of bar to the jurisdiction, that the lakheraj grant under which A claimed was made previously to 1790: *Held*, with reference to Act I of 1872 ss. 101, 103, and 106, that the *onus* of proving this plea was upon B. I. L. R. 3 Cal. 501.

See Ancestral Property 4.
Attachment 1, 9.
Banker 1.
Benamee 1, 6.
Churs 2, 11, 12, 14, 21.
Conjugal Rights 1.
Co-Sharers 11.
Custom 12.
Deed 2.
Desai 4.
Endowment 5, 19.
Enhancement 4, 10, 32.
Evidence 18.
Execution of Decree 45.
Guardian and Minor 1, 3.

ONUS PROBANDI (*continued*).

See **Hereditary Office 6.**
Hindoo Law (Adoption) 41.
,, (Coparcenary) 1, 4, 13.
,, (Inheritance and Succession) 16.
Hindoo Widow 3, 5, 9, 45.
Hoondee 3.
Husband and Wife 1, 2.
Insolvency 10.
Jagheer 1.
Julkur 1, 2.
Lakheraj 4.
Landlord and Tenant 3, 9.
Limitation 13, 45.
,, (Act XIV of 1859) 7.
Mahomedan Law 11.
Malicious Prosecution 1.
Manager 1, 2.
Marine 1.
Meerasee 1.
Mokurruree 1, 4, 6.
Mortgage 1, 5, 21*b*, 26, 49, 126.
Oudh 4.
Oudh Sub-Settlement 1.
Partition 3.
,, (Butwarra) 1.
Possession 2, 4, 7, 7*a*.
Practice (Criminal Trials) 2.
Privy Council 4.
Purchase-Money 1.
Railway 4, 8.
Res Judicata 21.
Right to Light and Air 1, 2.
,, Water 1.
Vendor and Purchaser 7.
Will 5, 15, 57.

Ornaments.

See **Jewels.**

Otti Mortgage.

See **Mortgage 84.**

Oudh.

1. *Ratio decidendi* in a suit between two grandsons as to proprietary right in a village in — registered in the name of the elder branch of the family. (P. C.) 2 P. C. R. 539 (17 W. R. 185; 14 Moo. 401).
2. Commissioner in Oudh. *See* Privy Council 29.
3. Settlement Officer in Oudh. *See* Hindoo Law (Inheritance and Succession) 30; Privy Council 29; Rent 2.
4. By Lord Canning's proclamation of 15th March 1858 all the proprietary rights in the soil of — were confiscated; and therefore in any suit to recover a mouzah situated therein, the plaintiff must show a title acquired, within 12 years previously, by some grant or proceeding of the Government subsequent to that proclamation. (P. C.) L. R. 6 I. A. 76 (I. L. R. 4 Cal. 727).
5. As to the effect of Lord Canning's proclamation and of Sir James Outram's proclamation dated 22nd March 1858, with reference to houses in Lucknow, *quære*. But it appearing in reference to the houses in suit that it was the intention of the Government to abandon altogether the confiscation and to leave the former owners to their rights in the same way as if there had never been any confiscation: *Held* that, on a plea of limitation by defendant in ejectment, alleging possession prior to the proclamation, the issue must be tried and determined in the same manner as if there had never been any confiscation at all. (P. C.) *Ib.*
6. Manager of an Estate under Act XXIV of 1870. *See* Oudh Talookdars Relief 1.
7. The effect of Lord Canning's proclamation of 15th March 1858 was to vest in the British Government all landed property in —, so that all who claim title to land there must claim through the Government. Consequently Nawab Malka Jehan Sahiba was held entitled to no more than a permission to occupy for her life the palace to which she asserted a right in perpetuity. (P. C.) 3 P. C. R. 584 (L. R. 6 I. A. 63).

See **Mortgage 21*a*, 96.**

Oudh Estates.

1. The Government letter of 10th October 1859 published in Schedule I annexed to Act I of 1869, gave the registered talookdar the absolute legal title as against the State and against adverse claimants to the talookdaree; but it did not relieve the talookdar from any equitable rights to which he might have subjected himself with a view to the completion of the settlement by his own agreement. Accordingly, where a registered talookdar bound himself expressly in writing to respect the rights of his cestui-que-trust who was the equitable owner, if she permitted him to be alone so registered, a deed of confiscation against her trustee was held not to affect her. (P. C.) 3 P. C. R. 1 (14 Moo. 112). *See* 3 P. C. R. 607 (L. R. 6 I. A. 161).
2. To bring any person within the operation of the above letter, he must be shown to be one with whom a Summary Settlement was made between 1st April 1858 and 10th October 1859 as talookdar. (P. C.) 3 P. C. R. 4 (L. R. 4 I. A. 198; L. R. I. A. Sup. 220). *See* 3 P. C. R. 607 (L. R. 6 I. A. 161).
3. The appellant because she originally claimed the superior, was held not barred now from asserting any subordinate right to which she may be entitled. Treating her interest, therefore, in the villages in question as that of a subordinate zemindar, or one entitled to make a sub-settlement for them, her liability to pay 10 per cent. to the talookdar, over and above the Government demand, was held to depend upon the Oudh Settlements Act XXVI of 1866. (P. C.) *Ib.* *See also* 3 P. C. R. 567 (L. R. 6 I. A. 1; I. L. R. 4 Cal. 839).
4. As the proprietor of certain villages and rights within a talook which she acquired by inheritance from her husband, her estate was held to be, not a life interest, but the estate of inheritance of a Hindoo widow with all its rights and liabilities. (P. C.) *Ib.*
5. *Quære* whether, since the passing of Act I of 1869, the reformation of a sunnud granted to any person within the second Schedule of that Act could be effected without a special Act of the Legislature. (P. C.) *Ib.*
6. The Government letter of 10th October 1859 was held not to apply to a Revenue Settlement of Talooka Chillaree with the infant Rajah Digbehoy Singh, which was resumed by Government after his death and before that letter was written; nor was it intended to create in the infant Rajah's grandmother a proprietary right in the talook by virtue of a temporary Revenue Settlement for three years, to which she had been allowed to succeed. (P. C.) 3 P. C. R. 12 (L. R. 4 I. A. 208; L. R. I. A. Sup. 237).
7. Act I of 1869 cannot apply to a suit commenced in 1867 and finally decided by the Courts in Oudh in 1868; nor where the plaintiff's name does not appear in the first of the lists mentioned in s. 8. (P. C.) *Ib.*
8. Where, as a reward for good service rendered to the British Government during the Mutiny by an undivided family in Oudh, their lands had been exempted from confiscation and other forfeited lands were transferred to their possession: *Held* that the grant of this property was made to one member of the family for the benefit of all the members; that Act I of 1869 conferred title in landed property; that the grantee acquired a permanent, heritable, and transferable right in the property; that he had, by an alienation *inter vivos*, transferred the property to the family to be held by them as joint property; and that the property was divisible among all the members of the family *per stirpes*, which was the prevailing mode, according to the Mitacshara law, in the absence of a family custom. (P. C.) 3 P. C. R. 304 (26 W. R. 55; L. R. 3 I. A. 259). *See* 3 P. C. R. 607 (L. R. 6 I. A. 161).
9. A person who has been registered as a talookdar under

OUDH ESTATES (*continued*).

Act I of 1869, and has thereby acquired a talookdaree right in the whole property, may, nevertheless, have made himself a trustee of a portion of the beneficial interest in lands comprised within the talook for another, and be liable to account accordingly. (P. C.) 3 P. C. R. 427; L. R. 4 I. A. 178; I. L. R. 3 Cal. 522). *See* 3 P. C. R. 607 (L. R. 6 I. A. 161).

10. Where a talookdar, not having male issue, is shown to have so exceptionally treated the son of a daughter as to give him in the family the place, consequence, and pre-eminence which would naturally belong to a son if one existed, and would not ordinarily be conceded to a daughter's son, and has thus indicated an intention that the person so treated shall be his successor, such person will be brought within the enactment of Act I of 1869 s. 22 cl. 4. In this case the Privy Council was of opinion that the late talookdar died, as he intended, to die, intestate (his will whereby he gave his wife power of nominating a successor having been revoked, as the will of a Hindoo may be, by parol); and that the appellant, his daughter's son, was the person who, under the clause of the Act above-mentioned, was entitled to succeed to the talook. (P. C.) 3 P. C. R. 458 (L. R. 4 I. A. 228; I. L. R. 3 Cal. 626).

11. Although the title conferred by the British Government, after the general confiscation of the land of Oudh, is absolute and over-rides all other titles, nevertheless the grantor under the Government may, by an express declaration of trust, or by an agreement to hold in trust, constitute himself a trustee. (P. C.) 3 P. C. R. 472 (I. L. R. 3 Cal. 645).

12. *Held* that the sunnud to Kablas Koer conferred a full proprietary and transferable right in the estate therein described upon her and her male heirs, according to the law of primogeniture, and that, by virtue of Act I of 1869 s. 3, she must be deemed to have acquired by the sunnud a permanent, heritable, and transferable right in the estate without any trust for the benefit of the reversionary heirs of her husband; and that on her dying intestate, under s. 22 cl. 11 of the same Act, and according to the Mitacshara law, the estate descended as her separate property to her daughter. (P. C.) 3 P. C. R. 474 (L. R. 5 I. A. 1).

13. *Held* that the respondent must be presumed to have held the villages included in the summary settlement and talookdaree sunnud made with and granted to him before the passing of Act I of 1869, as representative of and in trust for a joint Hindoo family governed by the Mitacshara law; and that that Act did not operate to change the condition of the parties so as to put an end to the trust. (P. C.) 3 P. C. R. 607 (L. R. 6 I. A. 161).

See Hindoo Law (Adoption) 49.

Oudh Sub-Settlement.

1. In order to entitle a person to a — of lands under Act XXVI of 1866, he must prove that he, or some person under whom he claims, has within the prescribed period held these lands as an under-proprietor under the talookdar, or the predecessor of that talookdar. It is not sufficient for him to show that he has been a proprietor of those lands by a title adverse to the talookdar. (P. C.) 3 P. C. R. 82.

2. Under-tenures held under contract, or under any arrangement from which a contract may be inferred, are within the definition of sub-proprietary rights given in the Rules annexed to Act XXVI of 1866, and their holders are entitled to a sub-settlement. (P. C.) 3 P. C. R. 566 (L. R. 5 I. A. 225).

3. *Held* that the grant of the *birt-zemindaree* interest in this case should be treated as the conveyance of a subordinate zemindaree interest, and that the holder of it was entitled to a sub-settlement under Act XXVI of 1866, but without prejudice to the talookdar's right, if any, to malikhana. (P. C.) 3 P. C. R. 567 (L. R. 6 I. A. 1; I. L. R. 4 Cal. 839).

4. It is clear that *birts* still subsisting are tenures which would entitle their holders to sub-settlement under Act XXVI of 1866. (P. C.) 3 P. C. R. 637 (L. R. 6 I. A. 145).

5. The letter of the late Maharajah Sir Maun Singh, a talookdar of Oudh, set out in the judgment of the Privy Council, was held to contain a promise for a sub-settlement, which was binding not only upon himself, but upon his successor also. (P. C.) 3 P. C. R. 649.

6. The provision of limitation (as it is called) in the Circular of 1861 made no distinction between birt tenures and all tenures in the nature of shankallaps. It applied to all birt tenures, but not to shankallaps, except those that were of the nature of birt. But that provision was in effect repealed by Acts XVI of 1865 and XIII of 1866, so that a suit of a birteeah became cognisable notwithstanding that he may not have been in possession in 1855. (P. C.) 3 P. C. R. 715 (L. R. 7 I. A. 17; I. L. R. 6 Cal. 218).

7. Plaintiff having been found to have held by an under-proprietary right as distinguished from a holding through privilege in favor, his claim to a sub-settlement was held not barred by the Rules contained in the Schedule to Act XXVI of 1866. (P. C.) *Ib.*

See Hindoo Law (Adoption) 49.
Mortgage 81.

Oudh Talookdars Relief.

1. The combined effect of Act XXIV of 1870 and of the 8th Rule made under it being that the manager of an estate is to determine the amount due for principal and interest up to the date of his determination calculated according to the contract rate (if any), and may allow subsequent interest on the amount so determined (as upon a judgment-debt) up to the time of payment at a rate not exceeding 6 per cent., the manager in this case awarded future interest at a higher rate than 6 per cent. The Commissioner on appeal, aware of the difficulty in the way of his hearing the appeal raised by the limitation of appeals prescribed by s. 10 of the Act, erroneously proceeded to act under Act VIII of 1859 s. 333, and varied the manager's order so far as it gave the rate of interest prohibited by law. The Privy Council affirmed this order as just and proper, only varying it as to the date from which the 6 per cent. interest should commence. (P. C.) 3 P. C. R. 562 (L. R. 5 I. A. 197).

Pachete.

1. In the case of the impartible raj of — there is no law or custom under which any one, not being a son or daughter of a deceased Rajah, can claim of right either maintenance or a grant in lieu of maintenance, from the person in possession for the time being of the raj. I. L. R. 5 Cal. 256.

Padamattur.

1. Disputed succession to the Palayapat of — as an impartible zemindaree. (P. C.) 3 P. C. R. 508 (L. R. 5 I. A. 61; I. L. R. 1 Mad. 312).

Pagoda.

See Temple 1.

Palankeen.

See Palki Huk.

Palayapat.

See Padamattur.

Palki Huk.

See Desai 1, 2.

Pandaram.

See Endowment 18.

Pardon.

See Accomplice 1, 2.

Parsees.

See Succession 3, 4, 5, 6, 7.
Will 64, 65.

Partition.

1. The principle in *Appoovier* v. *Rama Subba Aiyan* (that although an agreement for a — has not been carried out by actual — by metes and boundaries of the property, it was nevertheless binding upon the contracting parties, and operated as a division of the family) confirmed and supported by further authorities. (P. C.) 2 P. C. R. 265 (12 W. R. P. C. 40; 13 Moo. 113; 3 B. L. R. P. C. 41). *See also post* 7, 8.

2. The *Shivagunga* case, as to impartibility, explained. (P. C.) *Ib.; also* (P. C.) 2 P. C. R. 302 (13 W. R. P. C. 21; 13 Moo. 333).

3. Where plaintiffs sought to establish a religious trust upon certain lands in the occupation of defendants (plaintiffs and descendants being members of a joint Hindoo family), and stated that the trust was created by a deed of date subsequent to another deed by which the property had been partitioned by the joint family, but which latter deed they alleged had never been acted on, having been a mere device to protect the property from the creditors of one of its members who had become insolvent: *Held* that it lay on plaintiffs to make out a sufficient case to set aside the deed of —, which was found to be a registered document, and was *primâ facie* a good and operative deed. (P. C.) 2 P. C. R. 296 (13 W. R. P. C. 14; 4 B. L. R. P. C. 8). *See also* 13 Moo. 181.

4. The principle in *Abraham* v. *Abraham* (that a family ceasing to be Hindoos in religion may still enjoy their property under the Hindoo law) is applicable, *inter se*, to the members of a Hindoo family entering into possession of an estate under a compromise by which the members divided the estate among themselves on certain terms. (P. C.) 2 P. C. R. 365 (14 W. R. P. C. 33; 13 Moo. 497; 6 B. L. R. 202).

5. The Privy Council agreed with the findings of the Lower Courts that the documents proving the agreement to refer the dispute to arbitration, and the award of the arbitrators, were not spurious, and that the property in question was joint property, and was partitioned in the way declared in the award. (P. C.) 2 P. C. R. 857 (20 W. R. 25).

6. The mere fact that there had been no — of a family estate for six or seven generations cannot control the operation of the ordinary Hindoo law, or deprive the parties, if members of a joint and undivided family, of the right to demand a — when they are so minded. (P. C.) 2 P. C. R. 916; (13 B. L. R. 165; L. R. 1 I. A. 1).

7. Inasmuch as there may be a division of a joint and separate Hindoo family and of the joint property, such as to alter the status of the family without a regular — by metes and bounds, the question in every particular case of disputed division must be one of *intention*,—whether the intention of the parties, to be inferred from the documents which they have executed, and the acts they have done, was to effect such a division. (P. C.) 2 P. C. R. 939 (21 W. R. 214; L. R. 1 I. A. 55; 13 B. L. R. 235). *See also* 13 Moo. 181, *ante* 1, and *post* 8, 24.

8. Therefore the agreement of a family to divide the proceeds of the joint property among its members in definite shares, with the *intention* that each should hold his allotted share in severalty, severs the joint interest, and extinguishes the rights springing from united family ownership. (P. C.) 3 P. C. R. 151 (23 W. R. 412).

9. The Privy Council agreed with the Lower Courts in declaring the respondent's absolute title (under a final decree in a — suit) to an estate unencumbered by any *putnee* rights in the appellants. (P. C.) 3 P. C. R. 340 (26 W. R. 93).

10. Although a suit by a member of a joint Hindoo family against his co-sharers for a separate share of the joint estate be not in terms a suit for —, yet, if it appear that the intention of the plaintiff was to obtain the share which he would be entitled to on a separation, and the decree passed in the suit assigns him that share, such decree does in fact effect a —, at all events, of rights which, under the doctrine laid down in the case of *Appoovier* v. *Rama Subba Aiyan*, is effectual to destroy the joint estate. (P. C.) L. R. 5 I. A. 228 (I. L. R. 4 Cal. 434).

11. Where it was not very clear whether or not a formal order or decree upon a judgment was drawn up, but by that judgment there was a clear adjudication that the property in question was partible, and that plaintiff was entitled to a moiety of the property left by his father at his death, subject to the incumbrances and alienations of his father and his elder brother which were valid under the Hindoo law: *Held* that this judgment must be taken to be equivalent to a declaratory decree determining that there was to be a — of the estate into moieties, and making the brothers separate in estate from the date of that judgment, if they had not previously become so; and that being so, though the actual division of the property was not complete, the case fell within the principle of *Appoovier* v. *Rama Subba Aiyan*, and that there was no ground for the contention that, upon the plaintiff's death, his interest passed to his elder brother, and not to his own representatives in the course of succession as ascertained in the suit. (P. C.) 3 P. C. R. 654 (L. R. 6 I. A. 177; I. L. R. 2 Mad. 83).

12. In 1861 the Supreme Court at Bombay decided that the respondent could not sue his father and brothers for a declaration of his rights in and an immediate — of ancestral property, inasmuch as he had no right to compel his father in his lifetime to make a — of moveable, though it may be ancestral, property, and that the Supreme Court had no jurisdiction to make a — of the immoveable property which was beyond the limits of its territorial jurisdiction: *Held* that this decision did not amount to an adjudication between the brothers as to their rights in the joint ancestral property on their father's death, so as to bar the present suit for that — under Act VIII of 1859 s. 2. (P. C.) 3 P. C. R. 778 (L. R. 7 I. A. 181).

13. Where a Hindoo testator gave all his immoveable property to his sons, but postponed their enjoyment thereof by a clause that they should not make any division for 20 years: *Held* that the restriction was void as being a condition repugnant to the gift, and that the sons were entitled to — at once. (O. J.) I. L. R. 1 Cal. 104.

14. There is nothing in Act V of 1862 (Bombay) which debars a Civil Court from making a decree for the — of Narvadari land among the Bhagdars, even though such — may cause a further division of recognised sub-divisions of Bhags. I. L. R. 1 Bom. 225.

15. Members of an undivided Hindoo family making — are entitled, as a rule, not to an account of past transactions, but to a division of the family property actually existing at the date of —. I. L. R. 1 Bom. 561.

16. In a — suit, the Court ought not to order an immediate money payment by the defendant to the plaintiff of his share in the outstanding debts due to the family estate, as if such outstanding debts had been recovered and the money were in the hands of the defendant. *Ib.*

17. As a member of an undivided Hindoo family is not bound to effect a — by paying a certain sum of money to his coparcener or coparceners, the Court, in a — suit, ought not to award interest on money decreed to be paid by the defendant to the plaintiff. *Ib.*

18. In an undivided Hindoo family, the son has, under the Mitacshara law, the right to demand in the lifetime and against the will of his father, a — and possession of his share in the ancestral immoveable property of the family. (F. B.) I. L. R. 1 All. 159.

19. Definement of shares in joint ancestral property recorded as separate estate in the revenue records in pursuance of an alleged intended separation between the members of a joint and undivided Hindoo family does not necessarily amount to such separation, which must be shown by the best evidence, *viz.* separate enjoyment of profits, or an unmistakeable intention to separate interests which was carried into effect. I. L. R. 1 All. 437. *But see* I. L. R. 4 Bom. 157.

20. On a — among her sons, a mother is entitled to obtain a share as representative of a deceased son, as well as one in her own right. (O. J.) I. L. R. 3 Cal. 149.

21. A decree directed — of a family dwelling-house with its appurtenances, including a poojah dalan and courtyard adjoining it. In execution of that decree, the Civil Court Ameen, at the request and with the consent of two out of three coparceners, did not partition the poojah dalan and courtyard. To this the third coparcener objected, but her

Partition (*continued*).

objection was overruled by the Lower Courts, and it was directed that the property in question should remain undivided : *Held* that the Court would be disinclined to order the property to be divided without giving the coparcener or coparceners who might wish to keep it entire an opportunity of doing so by accepting his or their proportionate share of its value. I. L. R. 3 Cal. 514.

22. K's father having sued in 1867 for a share of joint family property, a compromise was effected by the parties to that suit, agreeing to a — of the estate on certain conditions, and a decree was accordingly passed in the terms of the compromise. K sued in 1876, in his father's lifetime, to obtain the same relief as his father had sought in 1867, and a declaration that the arrangement effected by the compromise and the decree was ineffectual : *Held* that, assuming that the estate was joint until 1867, K was, in the absence of fraud, bound by the compromise entered into by his father; and that, assuming that the estate was held in separate shares, the shares which K claimed descended as inheritance liable to obstruction, and that K could not question his father's acts. I. L. R. 1 All. 651.

23. A decree for — is not like a decree for money or the delivery of specific property, which is only in favor of the plaintiff in the suit. It is a joint declaration of the rights of persons interested in the property of which — is sought ; and such a decree, when properly drawn up, is in favor of each shareholder or set of shareholders having a distinct share. I. L. R. 3 Cal. 551.

23*a*. On — in a Mitacshara family, an adopted son and the adopted son of a natural son stand exactly in the same position, and each takes only the share proper of an adopted son, *i.e.*, half of the share which he would have taken had he been a natural son. The fact that such an adopted son, a member of a Mitacshara family, becomes upon adoption a joint owner of the family property, will not prevent the operation of the rule. I. L. R. 4 Cal. 425.

24. No right vests in any member of a joint Hindoo family to a specific share in the family property, until some act has been done which has the effect of turning the joint ownership into a several ownership. This may be done by signification of intention. It is by such signification of intention taking place, having the effect of making the share of each member both several and defined, that a member of a joint Hindoo family is enabled to dispose of his own share by sale whilst the family remains joint. *Ib.* *See also* 7, 8 *ante*.

25. In a suit for — after the father's death between brothers, the sons of different wives who are alive at the time when such suit is instituted, such wives are necessary parties to the suit, as they are entitled to share with their sons. (O. J.) I. L. R. 4 Cal. 756.

26. Where there is no indication of an intention to presently appropriate and enjoy in a manner inconsistent with the ordinary state of enjoyment of an undivided family, an agreement to divide without more is not of itself sufficient to effect a —. Nor is a direction to divide in a decree (which in principle is not distinguishable from a material agreement to divide) more than an inchoate — insufficient to change the character of the property, which continues a joint estate until there has been an actual — by metes and bounds, or a division of title so as to give to each member thenceforth a definite and certain share which he may claim the right to receive and enjoy in severalty. I. L. R. 4 Bom. 157.

27. It is very doubtful whether, under the Hindoo law, any partial — of the family property can take place except by arrangement. I. L. R. 5 Cal. 474.

28. By an agreement entered into between five brothers, who formed a joint Hindoo family, it was provided (among other things) that none of the parties, nor their representatives, nor any person, should be able to divide the real and personal property belonging to the family into shares. A son of one of the brothers sold his share in the family property. In a suit by the purchaser for — and an account of the property : *Held* that the general scheme of the arrangement between the brothers was such as could only be binding upon the actual parties to it, not upon a purchaser from one of the parties, and *á fortiori* not upon a purchaser from the heir of one of the parties. (O. J.) I. L. R. 6 Cal. 106.

29. The object of the arrangement was to settle the family property upon trust for the maintenance of the members of the family born and to be born. This could not be done by a gift, and what cannot be done by a gift cannot be done by the intervention of a trust. (O. J.) *Ib.*

30. The owner of property cannot by mere contract during his life prevent his heirs from partitioning property after his death, and such a prohibition is not binding upon an assignee of the heir. (O. J.) *Ib.*

See Ancestral Property 1, 2.
Co-Sharers 14, 15.
Enam 8.
Endowment 38, 40.
Evidence (Documentary) 9.
Gift 5.
Guardian and Minor 10.
Hindoo Law (Coparcenary) 12, 18, 19, 20.
,, (Inheritance and Succession) 29, 31, 33, 34.
Hindoo Widow 4, 10, 17, 29.
Impartibility.
Joinder of Parties 6.
Jurisdiction 54, 55, 56, 57.
Limitation 26.
,, (Act XIV of 1859) 11*a*, 18, 19, 28.
,, (Act IX of 1871) 111.
,, (Act XV of 1877) 23.
Mesne Profits 2.
Mortgage 16.
Naikins 2.
Oudh Estates 8.
Partition (Butwarra).
Pension 3.
Registration 14.
Res Judicata 35, 41.
Reversioner 3.
Stamp Duty 23.
Will 27.

Partition (Butwarra).

1. The plaintiff was held to have derived no title from a — without proving the order of — drawn out by the Collector in pursuance of Reg. XIX of 1814 s. 13, by analogy to the rule in England that, if a man claims property under a title derived from a sale in execution of a judgment to which he is a party, it is not sufficient to prove the writ of execution, but he must prove the judgment in order that the Court may see that the writ of execution was warranted by the judgment. (P. C.) 3 P. C. R. 643.

2. Where, in the course of carrying out an order for a — and of assigning the lands to each co-sharer, certain co-sharers claimed certain plots of land as belonging to them in severalty and demanded that the same should be assigned to them, and the Collector decided that some of such plots were held in severalty and one was held in common : *Held* that his decision was not passed under Act XIX of 1873 s. 113, and was therefore not appealable under s. 114. I. L. R. 2 All. 619.

See Co-Sharers 8.
Enhancement 4, 38.
Mortgage 17.
Possession 17.
Res Judicata 15, 27, 35.

Partnership.

1. Every one of the partners in a mercantile firm, whether his name appear on the face of the instrument or not, and whether he be a sleeping and secret partner, is liable upon a bill drawn by a partner in the recognised

Partnership (*continued*).

trading name of the firm, unless it be shown that the holder of the bill knew, at the time he received it, that the transaction was the private affair of a single partner. (P. C.) 2 P. C. R. 312 (13 W. R. P. C. 29; 13 Moo. 359).

2. Where two firms entered into a joint adventure to be conducted by an agent specially appointed by both firms, and one of the firms brought a suit against the other to recover their share of the alleged loss upon the joint adventure: *Held* that books of accounts kept by the plaintiffs themselves and two corresponding branches of their firm, and adduced by the plaintiffs in support of their claim, were not the books of a — and were not sufficient to entitle them to a decree without evidence showing that the sums mentioned in the books as paid to the agent were really applied by him to the purpose of the joint adventure. (P. C.) 2 P. C. R. 320 (13 W. R. P. C. 36; 4 B. L. R. P. C. 31: 13 Moo. 365).

3. To constitute a — the parties must have agreed to carry on business and to share profits in common. Participation in profits is a strong test of —. (P. C.) 2 P. C. R. 715 (18 W. R. 384; L. R. I. A. Sup. 86; 10 B. L. R. 312).

4. The relation of principal and agent ought not to be implied, any more than that of —, from the fact of a commission on profits and powers of control being given, when such relation is opposed to the real agreement and intention of the parties. (P. C.) *Ib.*

5. Where, by a contract of —, one of the partners was to manage the business, and his remuneration was not to be by salary, but by a commission upon the sales during his lifetime; and on its being found that the concern could not go on except at a loss, and the Company had to be wound up by an order of Court: the Privy Council, acting upon the distinction between the position of a man who is to be paid by a fixed salary, and that of a man who is to be paid by a commission, and upon a careful construction of the whole agreement, came to the conclusion that, by no fair and reasonable implication, could it be inferred that the partners relinquished their right of dissolving or applying to have the Company dissolved under the circumstances, or that they agreed, if they did exercise this right, to pay the managing partner compensation for the loss of commission not earned. (P. C.) 3 P. C. R. 326 (26 W. R. 78; L. R. 3 I. A. 200; I. L. R. 1 Bom. 468).

6. It appearing that the relation between plaintiff and defendant (two brothers) could not be taken to be strictly that of a joint Hindoo family, since, although joint as to their general concerns, and in some sense joint as members of a family, yet that relation was qualified by the provision contained in a family arrangement whereby each member might take out and use assets derived from a — firm for the benefit of his sole and separate speculations: *Held* that plaintiff had failed to make out his right to throw his own and his brother's acquisitions into hotchpot and so claim an equal division of them. (P. C.) 3 P. C. R. 349 (26 W. R. 17).

7. The above arrangement being of such an extraordinary character as to leave it in the power of each member to draw to an unlimited extent upon the assets of the firm, the Privy Council declined to extend the operation of such an agreement one iota beyond its terms, and therefore thought the High Court right in drawing a distinction between pledging the credit of the firm and drawing out money belonging to the firm. (P. C.) *Ib.*

8. Where, by an arrangement come to between the parties, part of the balance of account stated as due to plaintiffs by defendants was to be carried to the "block account," and the remainder to the "interest account," and the agreement fixed no time for its duration or for the liquidation of the debt: *Held* that, on the true construction of the agreement, either party could determine it when it was found to be working satisfactorily, having in this respect the same right as parties under a contract for a — at will. (P. C.) 3 P. C. R. 742 (L. R. 7 I. A. 83).

9. The construction of an ambiguous stipulation in a deed may be governed or qualified by a recital; but if the intention of the parties is clearly to be collected from the operative part of the instrument, that intention is not to be defeated or controlled, because it may go beyond what is expressed in the recital. Applying this distinction to the operative part of the instrument in this case, it was held that the security thereby constituted was intended to cover the general balance that might become due from defendants to plaintiffs upon all the accounts between them. (P. C.) *Ib.*

10. One partner of a firm represents the other partners for the purposes of production of documents. Therefore where the plaintiff, alleging that he had been a partner with the defendant and others in the firm of I K & Co., and that, on the dissolution of that firm, the amount then standing to his credit in the — books had been carried to his credit in the books of a new firm in which he and the defendant only were partners, applied for an order on the defendant to produce, for the plaintiff's inspection, the books of I K and Co., which application was resisted on the ground that the other partners in the firm of I K & Co. had an interest in those books, and were not parties to the present application, or shown to have consented to it: *Held* that the plaintiff was entitled to the order. (O. J.) I. L. R. 1 Bom. 496.

11. An association of artizans for the purpose of enhancing the price of their work by bringing all the business of the trade into one shop and dividing the prices of the work done amongst the members according to their skill, is an association that has for its object the acquisition of gain, and, if consisting of more than twenty persons, must be registered. Where more than twenty artizans signed an agreement whereby they constituted themselves an association for the above purpose, but which association was not registered as a Company under Act X of 1866: *Held* that the Court could not grant an injunction to restrain the breach of such agreement. (O. J.) I. L. R. 1 Bom. 550.

12. Account books, though proved not to have been regularly kept in course of business, yet proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, are relevant as admissions against the firm. (Cr.) I. L. R. 1 Bom. 610.

13. A suit was brought for a dissolution of — between plaintiff and first defendant for an account as between them. It was alleged in the plaint that plaintiff and first defendant entered into — in 1864 to work a jungle in the North Arcot district which had been leased to plaintiff for 3 years, that fourth defendant was subsequently admitted a partner, and that the contract was carried on under the style of R T and Co.; that in March 1867 fourth defendant took up a contract in Madras, and another general — was established of which plaintiff and first defendant were members; that the funds of the first firm became incorporated in the second firm which was styled K T and K, and that this firm undertook several contracts in Madras and Chingleput; and finally that the cause of action was the refusal of first defendant to account, and accrued in North Arcot district, where all the defendants resided permanently. The District Judge dismissed the suit on the ground that, under Act IX of 1872 s. 265, he had no jurisdiction: *Held* on appeal that the District Court of North Arcot had jurisdiction, as the defendants were resident within the jurisdiction, and that the provision of the above Act was permissive and did not prohibit a suit elsewhere than at the place where the — was carried on if a sufficient ground of jurisdiction existed. I. L. R. 1 Mad. 340.

14. A suit was instituted by only one of the partners of a firm in respect of a cause of action which had accrued to all jointly. Notwithstanding that objection to the non-joinder of the other partners was duly taken, the plaintiff contented himself with putting in a petition on behalf of the other partners intimating their willingness that the suit should proceed in the sole name of the plaintiff instead of applying to the Court to add the other partners, as plaintiffs. In appeal the High Court admitted the objection, and refused, under the circumstances, to add the other partners as plaintiffs. I. L. R. 1 All. 453.

15. In a suit for damages against a — firm, the plaintiffs compromised the suit with one of the partners upon the terms contained in the following receipt: "Received from A the sum of Rs. 9,500 in full discharge of all claims upon him as an individual and as a partner in the late firm of B S & Co., and we hereby undertake to immediately withdraw the suit against him and others": *Held* that although, according to English law, the receipt operated as a discharge to all the remaining defendants, yet that Act IX of 1872 s. 44 applies to liabilities arising out of the breach of a contract, as well as to the performance of contracts, and that A alone was released. (O. J.) I. L. R. 4 Cal. 336.

Partnership (*continued*).

16. Property belonging to a — cannot be seized in execution of a decree against one partner only. Accordingly, where a suit was brought against one partner only, and the decree made him alone liable: *Held* that only his property could be attached in execution of that decree. I. L. R. 4 Bom. 222.

17. The proper course for a partner seeking to remove an attachment on — property in execution of a decree against one partner only, is to sue for a dissolution of the — and an account, with a view to ascertain the amount due to the partner, in execution against whom the — property is attached. *Ib.*

18. Where a partner sued to establish his exclusive title to the — property attached and seized in execution of a decree against another partner, the High Court on appeal allowed the plaintiff to amend his plaint by converting that suit into one for a dissolution of — and an account, and remanded the case, with a direction to the Lower Court to make the other partners parties to it and to take an account. *Ib.*

See Arbitration 8, 20.
Attorney and Client 4, 8.
Ferry 3.
Guardian and Minor 20.
High Court 18.
Hindoo Law (Coparcenary) 16, 27, 28, 29, 30.
Hoondee 5.
Joint Stock Company 4.
Libel 6.
Limitation 22.
Misrepresentation 1.
Mortgage 100.
Privy Council 4.
Restraint of Trade 1.
Right of Occupancy 10.
Stamp Duty 5.
Will 24.

Party to Suit.

See Arrest 4.
Defect of Parties.
Execution of Decree 4, 5, 39.
Guardian and Minor, 35.
Joinder of Parties.
Municipal 5, 8.
Practice (Parties).
Privy Council 32.
Registration 50.
Sale (in Execution of Decree) 4.

Passenger.

See Bailment 5.

Patel.

1. A suit for a declaration of plaintiff's eligibility to officiate as — of a village is not prohibited by Act XXIII of 1871. I. L. R. 1 Bom. 531.

2. The prosecution of a police —, for an offence committed by him in his official capacity as such, needs no previous sanction. The provisions of Act VIII of 1867 (Bombay) s. 9, as amended by Act I of 1876 (Bombay), render a Police — removeable from his office without the previous sanction of Government, and therefore Act X of 1872 s. 466 does not apply. (Cr.) I. L. R. 4 Bom. 357.

See Criminal Proceedings 20.

Patent.

1. In a suit, under Act XV of 1859, for the infringement of a —, where the plaintiff had been in the habit of licensing the use of his invention: *Held* that the loss of the amount paid for such license was the measure of damages. I. L. R. 2 All. 368.

2. The meaning of the words "publicly or actually used" in Act XV of 1859 s. 23, discussed. *Ib.*

3. Where the defendant did not allege in his written statement that the invention was publicly used at certain places prior to the date of the petition for leave to file the specification, but was allowed to give evidence that the invention was so used at such places: *Held* that the plaintiff was not bound before trial to have called upon the defendant to supply the particulars as to such places, and such evidence was not admissible. *Ib.*

See Limitation (Act IX of 1871) 51.

Paternal Cousin.

See Hindoo Law (Inheritance and Succession) 41, 48.
,, Widow 24.

Paternal Uncle's Son.

See Hindoo Law (Inheritance and Succession) 48.

Paternal Uncle's Widow.

See Hindoo Law (Inheritance and Succession) 41, 47.

Pauper Suit or Appeal.

1. A petition to sue *in formâ pauperis* contains in itself all the particulars that Act VIII of 1859 requires in a plaint and *plus* these, a prayer to be allowed to sue *in formâ pauperis.* (P. C.) 3 P. C. R. 627 (L. R. 6 I. A. 126; I. L. R. 2 All. 241).

2. In this case, the plaintiff, after filing a petition to sue *in formâ pauperis*, and pending an enquiry into his pauperism which was delayed by various orders of the Court, raised a loan and paid into Court the amount of stamp fees chargeable under the Court Fees Act, whereby he gave up so much of the prayer of his petition as asked to be allowed to sue as a pauper: *Held* that there was nothing in Act VIII of 1859 requiring the rejection of the plaint under such circumstances, or preventing the petition from being considered as a plaint from the date it was filed, according to the explanation in Act IX of 1871 s. 4. (P. C.) *Ib.* *See* I. L. R. 5 Cal. 807.

3. The power of the High Court to allow a suit to be instituted *in formâ pauperis* includes the power to allow a suit to be continued as a pauper suit after it has been commenced in the ordinary form. (O. J.) I. L. R. 2 Cal. 130.

4. The Crown has the first claim to the proceeds of a pauper suit to the extent of the amount of Court fee that would have been payable at the institution of the suit had the plaintiff not been a pauper; and Act VIII of 1859 s. 309 does not preclude the Crown or its representative from its prerogative. I. L. R. 1 Bom. 7. *See also* I. L. R. 1 All. 596; *Ib.* 2 All. 196.

5. According to the Court Fees Act VII of 1870 s. 16, a pauper respondent is not entitled to present objections at the trial of an appeal without payment of stamp duty. I. L. R. 1 Bom. 75.

6. No appeal lies under Act X of 1877 from an order made under that Act rejecting an application for permission to sue as a pauper. (F. B.) I. L. R. 1 All. 745.

7. An application to sue as a pauper having been refused, on the ground that the suit was barred by limitation, the High Court, on revision, permitted the applicant to renew his application to the Court below. The Subordinate Judge verbally rejected this second application, stating that he would deliver a written judgment. Before the written judgment was delivered, the applicant offered to pay the usual Court fees (although not actually tendering them at the time), and asked that the petition might be

PAUPER SUIT OR APPEAL (*continued*).

taken as a plaint filed on the date of the first application, this offer was mentioned and refused in the written judgment: *Held* on the case coming up to the High Court under Act X of 1877 s. 622, that the circumstances of the case were not such as would justify the Court in interfering under that section. I. L. R. 5 Cal. 807.

8. An order made under Act X of 1877 s. 409 refusing leave to sue as a pauper is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person, against whom such order has been made to obtain a review. A petitioner applying for such review, must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625). (O. J.) I. L. R. 4 Bom. 414.

See Attorney and Client 5.
Dower 12.
Jurisdiction 11, 56.
Limitation (Act IX of 1871) 18, 19.

Pawning.

See Pledges and Pawns.

Payment.

1. Part —. *See* Dower 14, 15; Execution of Decree 39; Limitation (Act IX of 1871) 21, 71; Registration 24; Sale 11.

2. A Treasury officer, under the imposition of a gross fraud, paid money to the defendant, who was the innocent agent of the person who contrived the fraud. In paying the money, the Treasury officer neglected no reasonable precaution, nor was he in any way guilty of carelessness: *Held* that the defendant was bound, under Act IX of 1872 s. 72, to repay the money received by him, and that he could not defend himself by the plea that he had repaid it to his principal; nor could the Court allow that the circumstance that the principal was himself a servant of the plaintiff, and in the course of his employment obtained facilities for committing the fraud, relieve the defendant from his liability. I. L. R. 1 All. 79.

3. — into Court. *See* Attachment 21; Ejectment 6; Khas Mehal 1; Limitation 39, 50; Mortgage 68; Purdah Woman 8; Small Cause Court 23; Tender 2.

4. Uniform —. *See* Enhancement 2, 10, 16, 27, 33, 35; Mokurruree 9; Res Judicata 20.

See Account 8.
Adjustment 1.
Administrator-General 2.
Banker 1.
Bill of Exchange 8.
Bond 2, 5, 6.
Cesses.
Contract 15, 18.
Co-Sharers 2, 7, 14, 16, 17, 18.
Cross Decree 2.
Deed of Sale 3, 5.
Deposit 2.
Dower 3, 5, 11, 13, 14.
Evidence 7.
" (Documentary) 4.
Execution of Decree 42.
Guarantee 1, 2.
Hoondee 3, 11.
Husband and Wife 16.
Insolvency 15.
Instalments.
Insurance 3.
Interest, 2, 10, 14, 19, 20, 21.
Khas Mehal 1.
Landlord and Tenant 3, 7, 8, 9.
Lease 9.
See Limitation 27.
" (Act XIV of 1859) 21, 28, 29, 30.
" (Act IX of 1871) 18, 20, 25, 32, 33, 58, 71, 86, 87, 92, 95.
" (Act XV of 1877) 13, 15, 24, 25.
Lumbardar 1.
Money Decree 7.
Mortgage 17*b*, 54, 60, 81, 106, 108, 111, 112, 113, 117, 121, 132.
Municipal 4.
Partition 16, 17.
Pre-emption 1.
Principal and Surety 9, 10.
Privy Council 24.
Purchase-Money 1.
Registration 1, 16, 17, 21, 24, 42, 46, 51, 53.
Reimbursement 1.
Res Judicata 17, 20.
Sale (for Arrears of Revenue) 1.
Sheriff 4, 7.
Small Cause Court 6, 29, 31.
Stolen Property 2.
Tender 2.
Theft 1.
Toda Giras Huk 0.
Trespasser 1, 2.
Vendor and Purchaser 10.
Voluntary Payment.
Will 59.

Pedigree.

See Evidence 13.

Penal Code.

See Act XLV of 1860.

Penal Enactment.

See Construction 3.

Penal Servitude.

See Whipping 1.

Pension.

1. Act XXIII of 1871 s. 4 debars the Civil Court from taking cognizance of any suit, whether the Government is a party to it or not, which relates to any — or grant of money or land revenue conferred or made by the British or any former Government, without a certificate from the Collector or other authorized officer. S. 5 prescribes a remedy for the claimant of such — or grant; and s. 6 enables the Revenue Officer to refer the parties to a Civil Court for the determination of their respective interests in the income or other benefit, which the Executive will however still, as against either or both of the litigants, be at liberty to allow or to withhold. I. L. R. 1 Bom. 75.

2. Lands held free of assessment under a grant from Government, which bestows on the grantee the lands themselves and not merely the Government revenue arising from them, do not fall within the provisions of the — Act XXIII of 1871. *Ib.*

3. A *saranjam* is ordinarily impartible, and *semble* that a political — granted in substitution for a resumed *saranjam* is so likewise. Act XXIII of 1871 prevents a Civil Court from declaring such a — to be partible, unless the Collector should authorize it to do so; and the fact that the Collector authorizes a suit for maintenance out of such a —, affords no ground for presuming that he authorises a suit for the partition of the —. I. L. R. 2 Bom. 346.

Pension (*continued*).

4. On 28th September 1877, *i.e.* three days before Act X of 1877 came into operation, an application was made for the enforcement of a money-decree by attachment (*inter alia*) of a political — enjoyed by the defendants. Under Act VIII of 1859 s. 216 a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed at which date Act X of 1877 had come into force and contended that under s. 266 cl. (*g*) of that Act the — was no longer attachable: *Held* that all proceedings commenced and pending when Act X of 1877 became law were, under Act I of 1868 s. 6, to be governed by the law theretofore in force, the general rule of construction contained in that section not being affected or varied by Act X of 1877 ss. 1 and 3, and that a *bonâ fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment. I. L. R. 4 Bom. 163.

See Construction 43, 44.
Deshmukhs 1.
Limitation (Act IX of 1871) 57.
Toda Giras Huk.

Perjury.

See Criminal Proceedings 22.
Deed of Sale 1.
False Evidence.

Perpetuity.

See Attachment 11.
Enam 3.
Endowment 36.
Karanavan 1.
Lease 1*a*, 9.
Meerasee 6, 7, 8.
Mokurruree 7, 9.
Oudh 7.
Res Judicata 29.

Personal Appearance.

See Purdah Woman.

Plaint.

1. The Privy Council having held that, on the face of the —, no relevant case was made against the defendants; but that in a suit properly framed, if he proved his case, he would be entitled to a decree against one of the defendants, and considering that a new suit would probably be met by a plea of limitation, allowed the appellant to amend his — so as to make it a — against that defendant alone for the recovery of money due on a bond. They considered that the liability on the bond might be tried on the issues already settled, but they would not intimate any opinion upon them and the evidence, and remanded the suit for re-trial. (P. C.) 2 P. C. R. 107 (9 W. R. P. C. 9; 11 Moo. 468). *See also* 25 W. R. 425 (I. L. R. 2 Cal. 1), I. L. R. 3 Cal. 785.

2. The improper omission from a — of the titles by which a defendant is known is opposed to the requirements of Act VIII of 1859 s. 26, and renders the — liable to rejection if it be not amended. (P. C.) 2 P. C. R. 689 (18 W. R. 301; 12 B. L. R. 443).

3. Variation between — and schedule. *See* Res Judicata 5.

4. Taking the form given in Act VIII of 1859 s. 26 cl. 5 with that given in cl. 4, it is clear that, when a whole estate bearing a name is sued for, the boundaries need not be given. 25 W. R. 425 (I. L. R. 2 Cal. 1).

5. Although Act X of 1877 s. 57 contemplates the return of the — should error be patent, when it is first presented, yet there is nothing in the wording of that section which forbids the return of the — at a later stage in the suit. Where, therefore, after the issues in a suit were framed, the Court decided that it had no jurisdiction and returned the — to be presented in the proper Court: *Held* that in so doing the Court acted under s. 57; and its decision, not coming within the definition of a "decree" in Act XII of 1879 s. 2, was not appealable as such, but was appealable under Act X of 1877 s. 588 as an order. I. L. R. 2 All. 357.

6. After parties have come to trial to determine which of two stories is true, the plaintiff cannot be allowed to amend his — by abandoning his own story, and adopting that of the defendant, and asking relief on that footing; for the question, whether on that footing the plaintiff is entitled to relief, is one to which the defendant's attention has not been called, and as to which he has had no opportunity of answering. (O. J.) I. L. R. 5 Cal. 602.

7. In a suit to recover a specified sum for the hire of cargo boats and not asking for any other relief, the defendant alleged and proved that he was merely the agent of the plaintiff to find hirers for the boats and that he was not liable for the hire of the boats: *Held* that although *primâ facie* a principal is entitled to an account and discovery from his agent, the plaintiff could not obtain such relief in the suit as framed, and that he could not, after coming to a hearing, be allowed to amend his — by inserting an alternative prayer for relief, upon the footing of the case set up by the defendant. (O. J.) *Ib.*

8. By the amendment of the — a suit for the restoration of a pond, which it was alleged the defendants were wrongfully filling up, to its original condition, was altered into one for the protection of the plaintiffs from any infringement of, or for a declaration of, their right to a share in the produce, and the use of the water, by way of easement: *Held* that the alteration in the — was a material one; and that an Appellate Court is not empowered by Act X of 1877 to order or allow a — to be amended, or to remand a case under s. 562 of that Act for the purpose of such amendment. I. L. R. 2 All. 669.

9. *Semble* that where, at the first hearing of a suit, the — is returned for amendment within a fixed time under the provisions of Act X of 1877 s. 53, and it is amended accordingly, it cannot afterwards be again returned for amendment. I. L. R. 2 All. 671.

10. A —, signed by a person holding a general power of attorney to sue on behalf of the plaintiff, is properly signed within the meaning of the proviso in Act X of 1877 s. 51 (as amended by Act XII of 1879). (F. B.) I. L. R. 4 Bom. 468.

11. The Court must be satisfied, under s. 52, that a person, other than the plaintiff, verifying the —, is acquainted with the facts of the case; but in the case of a person holding a general power of attorney, or of any other recognized agent, the Court will not insist on any extreme stringency of proof. (F. B.) *Ib.*

12. S. 52 does not require the verification of a — to be made in the presence of an officer of the Court; but having regard to the necessity of satisfying the Court that the person, other than the plaintiff, who verifies the — is acquainted with the facts of the case, it is desirable that a verification by such a person should be made in the presence of the Court, unless the Court be satisfied that there is sufficient ground for dispensing with his attendance. (F. B.) *Ib.*

13. The — in a suit for money charged upon immoveable property which described such property as "the defendants' one biswa five biswansi share within the jurisdiction of the Court," was presented on 21st November 1878, within the period of limitation prescribed for such a suit by Act XV of 1877. It was subsequently returned for amendment, and, having been amended by the insertion of the words "in mouzah S, pergunna S" after the word "share," was presented again on 8th January 1879, after such period: *Held* that the date of the amendment of the — did not affect the question of limitation for the institution of the suit, and the return of the — for amendment and its subsequent presentation and acceptance by the Court did not constitute a fresh institution of the suit. I. L. R. 2 All. 832.

14. An appeal lies against an order rejecting a — on the

PLAINT (*continued*).

ground of its being insufficiently stamped. I. L. R. 6 Cal. 249.

See Arbitration 23.
Cheque 1.
Court Fees 2, 10, 16, 18.
Declaratory Decree 14, 32.
Hindoo Law (Religious Ceremonies) 2.
Joint Stock Company 4.
Limitation 23, 32.
" (Act IX of 1871) 18.
Mortgage 73.
Partnership 18.
Pauper Suit or Appeal 1, 2, 7.
Practice (Appeal) 5, 27.
" (Suit) 19.
Relinquishment 4.
Res Judicata 5.
Right of Occupancy 11.
Sale (in Execution of Decree) 44.
Title 1.

Pleader.

1. Pleader's fees. *See* Costs 5.

2. In this case the Privy Council refused to grant special leave to appeal, to a — who had been suspended from practice for misconduct. (P. C.) (L. R. 7 I. A. 6; I. L. R. 2 All. 511.

See Attorney and Client 2.
Deed of Sale 3.
Stamp Duty 9.

Pledges and Pawns.

See Bailment 3.

Poisonous Drugs.

1. Convictions under Act VIII of 1866 (Bombay) s. 11, can only be obtained outside the Town and Island of Bombay before Magistrates of the first class. (Cr.) I. L. R. 5 Bom. 167.

Police.

See Evidence (Admissions and Statements) 3, 7.
Gambling 1, 2.
High Court 20.
Information 1, 2, 3.
Magistrate 5.
Property Seized by Police.
Public Servant 3.

Polliam.

See Hereditary Right 2.

Pond.

See Plaint 8.
Tank.

Port Trust (Bombay).

See Libel 3, 4.

Possession.

1. Registration of the name of a person or his ancestor in the Government books, coupled with payment of revenue, is strong evidence of —, though not of title. (P. C.) 2 P. C. R. 208 (11 W. R. P. C. 35; 2 B. L. R. P. C. 85).

2. Where a survey proceeding, conducted in the presence of both parties, declares lands to be included in the zemindaree of a person, a plaintiff who sues such person to recover — of the lands as included in his own zemindaree, must prove by counter-evidence at what precise time, if ever, he or any one from whom he claims was in — of the lands. (P. C.) 2 P. C. R. 225 (12 W. R. P. C. 6; 12 Moo. 300; 2 B. L. R. P. C. 111).

3. Survey proceedings are evidence of actual —, and must be regarded as correct so far as the appearance of the country is recorded thereon, but, if questioned in time, are not conclusive on the question of title. (P. C.) 2 P. C. R. 286 (13 W. R. P. C. 7; 13 Moo. 58).

4. Where plaintiff brought a suit in 1856 to recover landed property which was in the — of defendant since 1845 and at the time of the institution of the suit: *Held* that, before plaintiff could recover, he must prove (1) — within 12 years, and (2) title to —. (P. C.) 2 P. C. R. 305 (13 W. R. P. C. 23).

5. Appellant had obtained a decree, establishing her mokurruree right as purchaser from the heir to a former proprietor, against grantees from deceased widows, and was opposed in execution by respondents who claimed as holding a dur-putnee granted in 1849 by the purchaser at a sale for arrears due by the former dur-putneedar. This claim was tried as a regular suit and decided in favor of respondents: *Held* in appeal that a proceeding before the Magistrate in 1841, which showed that actual — was in the grantees of the widows, was conclusive, and that the — of the grantees was referable solely to the title which was now vested in appellant and which could not be affected by the acquisition of the putnee title in 1849. (P. C.) 2 P. C. R. 581 (18 W. R. 1).

6. Defendant's admitted — for upwards of ten years was not allowed to be disturbed by plaintiffs who had not proved either title or —. (P. C.) 2 P. C. R. 618 (18 W. R. 91).

7. Where plaintiff sues for confirmation of — and seeks a declaratory decree, he must make out his title affirmatively. If the Indian Courts agree in holding that he has not done so, even though the High Court may not have attended to the depositions of material witnesses, the Privy Council will not disturb the decision of the High Court. (P. C.) 2 P. C. R. 735 (19 W. R. 1).

7*a*. A plaintiff in ejectment must give strict proof of his title. A valid lease cannot be granted by a person not in — of the lands leased. (P. C.) L. R. 1 I. A. 76.

8. A — on the part of one party, which is not shown to have commenced in wrong, can only be disturbed by distinct proof of a superior title in another party. (P. C.) 3 P. C. R. 218 (25 W. R. 81).

9. The Privy Council saw nothing in this case to take it out of the general and well-known rule relating to actions in the nature of ejectment, *viz.* that plaintiff must recover by force of his own title; and thought that it would be very unjust to allow defendants, who had been for nearly the whole time of prescription in — of villages of which they claimed to be purchasers for value, to be turned out of — by any person other than one who had established a clear title to present a —. (P. C.) 3 P. C. R. 508 (L. R. 5 I. A. 61; I. L. R. 1 Mad. 312).

10. Constructive —. *See* Land Dispute 3; Limitation (Act IX of 1871) 31; Limitation (Act XV of 1877) 4; Sale (in Execution of Decree) 11.

11. Twelve years' continuous — of land by a wrong-doer not only bars the remedy and extinguishes the title of the rightful owner, but confers a good title upon the wrong-doer. I. L. R. 3 Cal. 224.

12. *Semble.* Such title may be transferred to a third person whilst it is in course of acquisition and before it has been perfected by —. *Ib.*

13. Suits for — distinguished from suits for declaration of a particular title. *Ib.*

14. Where a plaintiff seeks to recover — of property of which he has been dispossessed, and bases his claim on the ground of purchase, and also upon the ground of a twelve years' possessory title, he is entitled to succeed if he proves his —, even if he fail to prove his purchase. *Ib.*

15. In a suit for an adjudication of plaintiff's right to and confirmation of — of certain lands on the allegation that they had been conveyed to him by one of the defend-

Possession (*continued*).

ants and that he was in actual — thereof and that his title thereto had been impeached by the subsequent sale of the same lands by his vendor to the other defendant, the Court of first instance found that the plaintiff's allegation of — was false, and dismissed the suit: *Held*, on appeal, that the suit was rightly dismissed, for though a plaintiff who brings forward a *bonâ fide* case, which he proves in substance but not in form, would be assisted by the Court, in the absence of such special circumstances no such assistance would be afforded. I. L. R. 4 Cal. 46.

16. One who holds — on behalf of another does not by mere denial of that other's title make his — adverse, so as to give himself the benefit of the Statute of Limitation. I. L. R. 4 Cal. 327.

17. The — given by an ameen in a *butwarra* proceeding is simply one of ownership and not of occupancy. Such — cannot, therefore, in proceedings under Act X of 1872 s. 530, be held to oust tenants occupying lands previously to such delivery of —. I. L. R. 4 Cal. 378.

18. Where, in pursuance of an order made in the execution of a decree while Act VIII of 1859 was in force, certain persons were dispossessed of certain property after that Act was repealed and Act X of 1877 came into force, and such persons applied under Act X of 1877 s. 332 to be restored to the — of such property on certain of the grounds specified in that section: *Held* that such persons were entitled to the benefit of that section. I. L. R. 2 All. 94.

19. A person claiming under Act X of 1877 s. 332 need not prove his title but only the fact of —. *Ib.*

20. Where a person claims — of property under a specific title, coupled with an allegation that he has been in — of that property for more than twelve years under that title, he is entitled to a decree on the strength of his twelve years' —, even though he failed to make out his specific title. *Aliter* where a declaratory decree by virtue of some particular title is sought for. I. L. R. 4 Cal. 699.

21. When a person making a claim to certain property under Act VIII of 1859 s. 230 has been allowed to bring a suit under that section to try his right to the property, it is sufficient, in the first instance, for him to prove his —, without proof of title; but if he takes this course, it is open to the defendant to show that although — may be in the plaintiff, yet he has no good title to the property, and that he (defendant) has a better title. I. L. R. 5 Cal. 278.

22. Symbolical —. *See* Limitation 48; Limitation (Act XV of 1877) 21, 23.

See Adverse Possession.
Ancestral Property 3, 7, 12, 14.
Arms 1.
Assignment 3.
Attachment 9, 10, 20.
Attorney and Client 5.
Bailment 3.
Benamee 12, 14, 16.
Building 1.
Churs 2, 11, 20, 21.
Conveyance (Transfer and Assignment) 1.
Cotton Frauds (Bombay) 1, 2.
Court Fees 8.
Criminal Trespass 4, 8.
Custom 9, 10, 11.
Declaratory Decree 13, 16, 18.
Decree 13.
Dower 3.
Enam 8.
Endowment 30.
Estoppel 10.
Evidence (Documentary) 10, 11.
Execution of Decree 15, 22, 26.
Ghatwals 1.
Gift 4, 9, 10, 12, 13.
Guardian and Minor 15.
See Hindoo Law (Adoption) 25.
„ (Coparcenary) 7, 18.
„ (Inheritance and Succession) 48.
Hindoo Widow 4, 17, 34, 36, 62.
Hoondee 3, 10, 11.
Husband and Wife 14.
Illegitimate 3, 7.
Indigo 1.
Insolvency 3, 4.
Jagheer 1.
Joinder of Causes of Action 2, 3.
„ Parties 4.
Jurisdiction 7, 22, 50.
Kubooleutdar Khot 1.
Lakheraj 3.
Land Dispute 1, 2, 3, 5, 6.
Landlord and Tenant 9, 12.
Lease 2.
Limitation 7, 9, 10, 11, 13, 14, 28, 30, 33, 34, 40, 41, 45, 48.
„ (Act XIV of 1859) 16.
„ (Act IX of 1871) 1, 2, 4, 7, 27, 29, 31, 35, 45, 49, 62, 97.
„ (Act XV of 1877) 10, 15, 21, 22, 23, 27, 28, 30, 34, 43, 49, 51.
Mahomedan Law 2, 13.
Maintenance 7.
Meerasee 1, 2, 6, 7, 8.
Mesne Profits 1, 5, 8, 9.
Mokurruree 4.
Mortgage 5, 6, 7, 12, 13, 17*a*, 24, 25, 29, 41, 42, 45, 49, 52, 55, 56, 59, 60, 77, 78, 80, 82, 98, 100, 102, 104, 105, 108, 114, 115, 121, 128, 130.
Onus Probandi 1.
Oudh 5.
Partition 4, 18.
Possessory Award.
Pre-emption 13.
Prescription 1.
Privy Council 27.
Prostitution 1.
Putnee 8, 13.
Puttee 2.
Registration 22, 32, 45, 49.
Relief 1, 2.
Relinquishment 5.
Res Judicata 2, 5, 12, 15, 31, 32.
Right of Occupancy 11, 12.
„ Way 1.
Sale (in Execution of Decree) 21, 22, 29, 32, 44.
Service Tenure 8.
Settlement 1.
Small Cause Court 8, 12, 13.
Splitting Cause of Action 2, 4.
Survey 2.
Theft 1.
Title 1.
„ Deeds 1.
Trespasser 2.
Trust 8, 9.
Vendor and Purchaser 4, 5, 6, 7, 10.

Possessory Award.

See Churs 11.

Possessory Award (*continued*).

Julkur 1, 2.
Limitation (Act XIV of 1859) 16.
Mokurruree 4.
Prescription 1.

Postponement.

See Adjournment.
Sale (in Execution of Decree) 49.

Postpone Petition.

See Right of Suit 1.

Pottah.

1. A — cannot *primâ facie* be assumed to give a hereditary interest though it contains no words of inheritance; but where proof exists of long uninterrupted enjoyment of a tenure, accompanied by recognition of its hereditary and transferable character, it is sufficient to supply the words "from generation to generation." (P. C.) 2 P. C. R. 92 (9 W. R. P. C. 3; 11 Moo. 433). *See also* 11 W. R. 259, 432; 24 W. R. 301.

2. A — may be a confirmatory grant only; and there is nothing in accepting such a grant inconsistent with the presumption that a prior title existed. (P. C.) 2 P. C. R. 836 (19 W. R. 353; 12 B. L. R. 229).

3. In order to determine whether a — granted by a zemindar conveyed an estate for life only or an estate of inheritance: *Held* that it was necessary to arrive, as well as could be done, at the real intention of the parties, to be collected chiefly from the terms of the instrument, but to a certain extent also from the circumstances existing at the time, and further by the conduct of the parties since its execution. (P. C.) 3 P. C. R. 159 (24 W. R. 176).

4. The operation of the proviso to Act VIII of 1865 (Madras) s. 3 was not intended to be confined to cases in which suits are brought under ss. 8, 9, and 10, but to apply to all pottahs which come within s. 3. (P. C.) 3 P. C. R. 646 (L. R. 6 I. A. 170; I. L. R. 2 Mad. 67).

5. Where the parties are bound to exchange written engagements in the shape of pottahs and mochulkas, the landholder must, in order to maintain a suit, under Act VIII of 1865 (Madras) s. 9, to enforce acceptance of a —, show that he has tendered a — in writing. A mere indefinite demand or notice, whether written or unwritten, is not sufficient to sustain such a suit. I. L. R. 1 Mad. 45.

6. The pottahs and mochulkas required by Act VIII of 1865 (Madras) should be made during the existence, but not necessarily at the commencement, of the tenancy the terms of which they are meant to express. I. L. R. 1 Mad. 146.

7. S. 4 of the Act requires no more than that the — should mention the rate and proportion of the produce to be given, and not the specific quantity or number of measures. *Ib.*

8. A suit, under s. 9 of the same Act, to enforce the acceptance of a —, is not a suit to enforce the terms of a tenancy within the meaning of s. 7, but a suit to determine those terms. I. L. R. 1 Mad. 389.

9. A regular suit to enforce the acceptance of a — is maintainable. I. L. R. 2 Mad. 89.

See Co-Sharers 6.
Enhancement 2.
Kubooleut 1.
Lease 2, 5, 6.
Limitation (Act IX of 1871) 93.
Meerasee.
Mokurruree 6.
Registration 13.

Poundage.

See Sheriff 4.

Power of Attorney.

See Breach of Trust 1.
Jurisdiction 15.
Plaint 10, 11.
Purdah Woman 9, 10.
Stamp Duty 12.
Will 39.

Power of Sale.

See Mortgage 32, 61, 68, 78.
Will 39.

Practice (Appeal).

1. An appeal ought not to be determined on issues or grounds not considered or taken on trial in the Courts below. (P. C.) 2 P. C. R. 199 (11 W. R. P. C. 27; 12 Moo. 470; 2 B. L. R. P. C. 64. *See also post* 18.

2. Where a plaintiff was declared by a judgment to be entitled to a share of the property sued for, and the decree on that judgment awarded the whole of the property to the plaintiff, but there was nothing to enable the Appellate Court to limit the decree to the share to which his right was established, the decree was entirely set aside, and the case was remanded to ascertain that share. (P. C.) 2 P. C. R. 219 (12 W. R. P. C. 1; 2 B. L. P. C. 101; 12 Moo. 350).

3. Where, in the last stage of appeal, a case is made which is hardly consistent with the false case originally set up, and which was never made the real issue between the parties in any previous stage of the litigation, it cannot be relied on in any degree so far as it affects the case made by the other side. (P. C.) 2 P. C. R. 732 (18 W. R. 523).

4. When an appellant comes to complain of the judgment of a Court upon a point which does not appear upon its judgment, it would be proper, and at least convenient, that some explanation should be given why this point does not so appear. (P. C.) 3 P. C. R. 617 (L. R. 6 I. A. 114; I. L. R. 3 Bom. 415.

5. Where the Appellate Court decides that the Lower Court had no jurisdiction to entertain the suit, it should return the plaint to the plaintiff in order that it may be presented to the proper Court. I. L. R. 1 Bom. 538.

6. Act X of 1872 s. 280 authorizes an Appellate Court, subject to the proviso in the final sentence, to enhance any punishment that has been awarded. (Cr.) I. L. R. 1 Mad. 54.

7. As an Appellate Court, a 1st Class Magistrate has power to pass any sentence which a Subordinate Magistrate may have passed. (Cr.) *Ib.*

8. A petition of appeal in a criminal case may be presented to the Appellate Court by any person authorized by the appellant to present it. (Cr.) I. L. R. 1 Mad. 304.

9. A certain suit was dismissed on 26th July 1875, on which day plaintiff applied for a copy of the Court's decree. She obtained the copy on 31st July; and on 31st August, or one day beyond the period allowed by law, she presented an appeal to the Appellate Court. She did not assign in her petition any cause for not presenting it within such period, but alleged verbally that she had miscalculated the period. The Appellate Court recorded that it should excuse the delay, and admitted the appeal: *Held* that there was under the circumstances no sufficient cause for the delay. I. L. R. 1 All. 250.

10. An Appellate Court should not admit an appeal after the period of limitation prescribed therefor, without recording its reasons for being satisfied that there was sufficient ground for not presenting it within such period. *Ib.*

11. Where, under Act VIII of 1859 s. 336, a memorandum of appeal is returned for the purpose of being corrected, the Appellate Court should specify a time for such correction. Where an appellant presented an appeal within the period of limitation prescribed therefor, and the Appellate Court returned the memorandum of appeal for correction without specifying a time for such correction, the appeal again presented some days after the period of limitation was held presented within time, the date of its presentation being the date it was presented. I. L. R. 1 All. 260.

PRACTICE (APPEAL) (*continued*).

So also, under Act X of 1877 s. 54 (*b*), when a memorandum of appeal, insufficiently stamped, is returned that it may be sufficiently stamped. I. L. R. 2 All. 875.

12. An appellant, who was respondent in a lower Court of Appeal, is not precluded, by reason of his non-appearance in such Court, from preferring an appeal to the High Court. I. L. R. 3 Cal. 228.

13. An Appellate Court, hearing an appeal *ex-parte* in the absence of the respondent, cannot, *suo motu*, raise points in favor of the respondent, but must confine its decision to the questions raised by the appellant. I. L. R. 1 All. 545.

14. K was tried in a summary way and convicted. He appealed to the Court of Session, which quashed his conviction on the ground merely that the substance of the evidence on which the conviction was had was not embodied in the Magistrate's judgment: *Held* that the Court of Session should not have quashed the conviction merely by reason of such defect; it should have required the Magistrate to repair the same by recording a proper judgment, and if necessary re-examining the witnesses for that purpose, or to have ordered a re-trial with that view. (Cr.) I. L. R. 1 All. 680.

15. Where the Appellate Court demands from an appellant security for costs, the Court may extend the time within which it orders such security to be furnished; but if no application is made for such extension of time, and such security is not paid within the time entered, it is imperative on the Court, under Act X of 1877 s. 549, to reject the appeal. I. L. R. 1 All. 687.

16. The Court of Appeal has power under Act VIII of 1859 s. 337 (corresponding with Act X of 1877 s. 544) to draw up what would be a fair decree as regards all the parties to a suit, although some of them may not have appealed. (O. J. Ap.) I. L. R. 3 Cal. 738. *But see* 2 P. C. R. 766 (11 B. L. R. 375; L. R. 1. A. Sup. 135).

17. Act X of 1872 gives no right to the heir, devisee, executor, or any other representative of a deceased convict, to lodge an appeal, or continue and prosecute an appeal already lodged. The appeal lodged by a convict abates on his death. The High Court, nevertheless, may call for and examine the record of the case with a view to revision and rectification, and may make such order thereon as it may consider just. (Cr.) I. L. R. 2 Bom. 564.

18. A Judge is not permitted to make in appeal a different case for the appellant from that which he alleged for himself in the Court of first instance. I. L. R. 2 Bom. 635. *See also* 1 *ante*.

19. An Appellate Court has a discretionary power to substitute or add a new appellant or respondent after the period of limitation prescribed for an appeal, according to the analogous provision in Act XV of 1877 s. 22, with respect to suits. I. L. R. 2 All. 107.

20. Plaintiffs sued for the cancellation of a bond for the payment of Rs. 6,000 together with interest thereon at the rate of four per cent. per mensem, alleging that they had executed such bond under the impression that it was a bond for the payment of Rs. 3,000 together with interest thereon at the rate of one and a half per cent. per mensem, whereas the defendants had fraudulently caused them to execute the bond. Plaintiffs paid into Court Rs. 3,000 together with interest at the rate of one and a half per cent. per mensem: *Held* that the value of the subject-matter in dispute was the difference between Rs. 3,000 and Rs. 6,000 or thereabouts, and therefore the appeal from the decree of the Court of first instance preferred to the District Judge was cognizable by him. I. L. R. 2 All. 148.

21. Where a suit has been instituted under Act VIII of 1859, but decided at a time when Act X of 1877 had come into operation, and an appeal is presented against such decision, s. 3 of the latter Act distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal presented when Act X of 1877 was in force, has been dismissed under s. 556 of that Act, the appellant may apply for its re-admission under s. 558; and if such re-admission is refused, he is entitled to an appeal under s. 588 (*v*). I. L. R. 4 Cal. 825.

22. Where the defendant does not appeal against or object to the amount awarded by the first Court to the plaintiff, it is not open to the Appellate Court to reduce it. I. L. R. 4 Bom. 293.

23. S sued N and R jointly and severally for certain moneys. The Court of first instance gave S a decree for such moneys against N, and dismissed the suit against R. N appealed from the decree of the Court of first instance, but S did not appeal from it. The Appellate Court, at the first hearing of N's appeal, made R a respondent, the period allowed by law for S to have preferred an appeal having then expired, and eventually reversed the decree of the Court of first instance, dismissing the suit as against N, and giving S a decree against R: *Held* that, although the Appellate Court was competent to make R a party to the appeal under Act X of 1877 ss. 32 and 582, yet it was not competent, with reference to Act XV of 1877 s. 22, to give S a decree against R, the former not having appealed from the decree of the Court of first instance within the time allowed by law. I. L. R. 2 All. 487.

24. An appeal was heard *ex-parte* in the absence of the respondent (defendant), and judgment was given against him. He applied to the Appellate Court to re-hear the appeal, and the Appellate Court refused to re-hear it. He then appealed, not from the order refusing to re-hear the appeal, but from the decree of the Appellate Court: *Held* that he was not debarred, by reason that he had not appealed from the order refusing to re-hear the appeal, from appealing from the decree of the Appellate Court. I. L. R. 2 All. 567.

25. Both parties appealed from the decree of the Court of first instance, and both the appeals were dismissed by the Lower Appellate Court. The plaintiff appealed to the High Court from the decree of the Lower Appellate Court dismissing his appeal, whereupon the defendant took objections to the decree of the Lower Appellate Court dismissing his appeal: *Held* that such objections could not be entertained. I. L. R. 2 All. 651.

26. B sued M and T for money due on a bond, and on 27th April 1877 obtained a decree against T, the suit against M being dismissed. T applied for a review of judgment, and B also made a similar application. On 25th May 1877 T's application was granted, and on 16th July 1877 B's was rejected. On 29th June 1878 the Court re-heard the suit against T and dismissed it. B appealed, making T and M respondents, and impugning in his memorandum of appeal the decree of 27th April 1877, as well as that of 29th June 1878. The Appellate Court, assuming that the appeal was one from the decree of 27th April 1877, preferred beyond time, admitted it after time, and after hearing the case on its merits, gave a decree against M, and dismissed the suit as regards T: *Held* that the Appellate Court erred in assuming that the appeal was from the decree of 27th April 1877, and that it was at liberty to admit it beyond time, the appeal being from the decree of 29th June 1878, that decree being the one which had brought B before that Court as an appellant, and that the Appellate Court was not competent, on an appeal from the decree of 29th June 1878, to reconsider the merits of the case against M, the appeal from the decree of 27th April 1877 being barred by limitation, and that decree and the decree of 29th June 1878 being separate and distinct, and not appealable in one memorandum of appeal from the latter decree. I. L. R. 2 All. 772.

27. The refusal of a plaintiff-respondent to make good a deficiency in Court-fees in respect of his plaint when called upon to do so by the Appellate Court, is not a ground upon which the Appellate Court should reverse the decree of the Court of first instance and dismiss the suit. I. L. R. 2 All. 889.

28. Assuming that an Appellate Court, in deciding a case in a manner inconsistent with and opposed to the finding returned to it by the Court of first instance under Act X of 1877 s. 566, in the absence of objections, acted irregularly, its decree could not be reversed or the case remanded on account of such irregularity, such irregularity not affecting the merits of the case or the jurisdiction of the Court. I. L. R. 2 All. 908.

29. It is not open to a defendant to change the whole nature of his defence at the last moment, and to set up in a Court of Appeal a plea which he has directly and fraudulently repudiated in the Court below. I. L. R. 6 Cal. 55.

30. Procedure analogous to that laid down in Act X of 1877 s. 368 in respect to the death of a defendant, must be applied in the case of the death of a respondent. Where, therefore, a respondent dies during the pendency of an appeal, it is for the appellant to take the initiative, and he

PRACTICE (APPEAL) (*continued*).

is at liberty to select one or more persons to defend the appeal; and no person, other than the person so selected, has a right to force himself into the proceedings and to claim to have his name entered as representative of the deceased respondent against the appellant's consent. Persons so introduced on the record, may or may not be the real representatives of the deceased respondent; but the merits of their claim to be such, on the ground of any right or *status*, such as that of adoption, is immaterial to the determination of the appeal. I. L. R. 4 Bom. 654.

See Administrator General 1.
Arrest 1.
Churs 3, 4.
Construction 2.
Costs 2.
Court Fees 1.
Decree 2.
Dower 7.
Estoppel 19.
Evidence (Documentary) 1.
Execution of Decree 11, 22, 40.
High Court 30, 36.
Interest 4.
Issues 3, 4, 5.
Joint Stock Company 4, 5.
Jurisdiction 36, 49.
Limitation (Act IX of 1871) 2.
Mesne Profits 5.
Negligence 1.
Plaint 1.
Practice (Commissions) 1.
,, (Criminal Trials) 1.
,, (Review) 10, 13, 18.
,, (Suit) 6, 11.
Principal and Surety 8.
Privy Council.
Public Servant 4.
Registration 29.
Special Appeal 1, 2, 3, 7, 8.
Stamp Duty 8, 11.
Stolen Property 1.

Practice (Commissions).

1. An Appellate Court ought not to interfere with the result of a local enquiry except upon clearly defined and sufficient grounds, which must be expressed in its judgment. (P. C.) 2 P. C. R. 393 (15 W. R. P. C. 20; 6 B. L. R. 677; 13 Moo. 607). *See also* 15 W. R. 423, 18 W. R. 452.

2. In a suit for an account it was ordered by consent of the parties that the cause should be referred to a Commissioner to take accounts, who in taking them was to decide upon all questions of fact, whether as to the delivery of certain merchandise, or the value of such merchandise delivered or otherwise, with full powers for the purposes of the investigation; and that, if questions of law should arise and could not be settled or disposed of before the Commissioner, they were to be submitted to the Court: *Held* that this reference was different from the ordinary reference to a Commissioner to examine accounts under Act VIII of 1859 s. 181. *Quære* whether it would be competent to the Court to reopen a question of account against a clear finding upon a question of fact relating to the account and made by the Commissioner upon the evidence properly before him. (P. C.) L. R. 1 I. A. 346.

3. Where a report, or supplementary report, has been made by Commissioners, to whom accounts have been referred for investigation under Act VIII of 1859 s. 181, the Privy Council will not entertain any objections thereto which have neither been brought to the notice of the first Court nor made in any of the grounds of appeal in the Courts in India. (P. C.) L. R. 2 I. A. 34.

4. Practice of the High Court in moving to discharge or vary a report of the Commissioner for taking accounts. (O. J.) I. L. R. 1 Bom. 158.

5. The word "decree" in Act X of 1877 s. 3 means an order final in its nature, and does not include an interlocutory order, such as an order of reference to take accounts, although such order may, in general, be properly termed a "decree;" and therefore a suit which has been referred by the Court to the Commissioner to take accounts is still in a stage "prior to decree" within the meaning of s. 3. (O. J.) I. L. R. 3 Bom. 161.

6. The general nature of a certificate or report, whether general or separate, by the Commissioner for taking accounts, is that it should, in the case of a general certificate, comprise the result of all the proceedings under the decree or order of reference, or, in the case of a separate certificate or report, that it should comprise the result of some or one of such proceedings, and the Court is not bound to consider a certificate granted by the Commissioner unless he has certified what may be regarded as the *result* either of the whole enquiry referred to him or of some branch or part of it. *Ib.*

7. The power of the Commissioner to grant certificates, and of the Court to deal with motions made with reference thereto, considered. *Ib.*

8. *Quære* whether, where a suit has been referred to the Commissioner for taking accounts, such accounts, in the absence of any direction in the decree or order of reference that stated or settled accounts are not to be disturbed, should not be taken without regard to any previous accounts stated or settled between the parties. *Ib.*

See Account 3.
Divorce 1.
Practice (Review) 13.
Purdah Woman 8.

Practice (Criminal Trials).

1. The accused persons were tried on 27 charges comprising the offences of theft, the abetment of theft, and receiving stolen property in 1872-73, 1873-74, and 1874-75; the giving and receiving of gratifications to and by public servants in 1874-75; and the fabrication and abetment of fabrication of false evidence in 1876. One of the accused was convicted on two heads of charge, and the rest acquitted. The convict appealed against his conviction and sentence; and the Government appealed against his acquittal on the other heads, as well as against the acquittal of the rest: *Held* that the trial was irregular under Act X of 1872 s. 452, and so would be the hearing of the appeal. The High Court, however, heard the appeal in respect of offences in 1874-75 only, it appearing that those offences did not prejudice the accused persons who had been fully and fairly tried for those offences. (Cr.) I. L. R. 1 Bom. 610.

2. In all criminal cases tried in the Mofussil, it is incumbent on the accused, since the passing of Act I of 1872, to prove the existence (if any) of circumstances which bring the offence charged within the general or special exceptions or provisoes contained in any part of the Penal Code or in any law defining such offence. *Quære* as to the state of the law in the Presidency towns. (Cr.) I. L. R. 4 Cal. 124.

3. Observations by Stuart *C. J.* on the impropriety of a judicial officer adding a "note" to his judgment in a criminal case, impugning the correctness of the conclusion he has arrived at on the evidence in such case. (Cr.) I. L. R. 2 All. 33.

4. Except under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged. (Cr.) I. L. R. 5 Cal. 768.

5. When arraigning an accused, and before receiving his plea, the Court should be careful to insure the explanation of the charge in a manner sufficiently explicit to enable the accused to understand thoroughly the nature of the charge to which he is called upon to plead. (Cr.) I. L. R. 5 Cal. 826.

6. It is not necessary that a statement made to a Court by an accused in a foreign language should be taken down in the words of that language. The language in which the

PRACTICE (CRIMINAL TRIALS) (*continued*).

statement is conveyed to the Court by the interpreter is the language in which it should be recorded. (Cr.) *Ib.*

7. Members of two opposing parties in a riot were, under two distinct committals, sent up for trial before the Sessions Judge and a jury. After the close of the case for the prosecution in one of these cases, the Sessions Judge, with the consent of the pleaders representing the accused, postponed the taking of the evidence for the defence, and proceeded to examine the witnesses for the prosecution in the counter case before the same jury. The Court then took the evidence of the witnesses for the defence in the first and in the counter case in the order named, and after hearing the address of the various pleaders for the defence and the reply of the Government Pleader, proceeded to sum up the facts in both cases to the jury, who returned a verdict in respect of all the accused: *Held* that the procedure resorted to by the Judge was a practical violation of the rule which necessitated the keeping of trials in such cases distinctly separate, and that its adoption having materially prejudiced the interests of the accused, the convictions should be set aside. (Cr.) I. L. R. 6 Cal. 97.

8. At a trial before a Sessions Court, the Judge, on the examination-in-chief of the witnesses for the prosecution being finished, questioned the witnesses at considerable length upon the points to which he must have known that the cross-examination would certainly and properly be directed: *Held* that such a course of procedure was irregular, and opposed to the provisions of Act I of 1872 s. 138. It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in s. 138 of that Act. (Cr.) I. L. R. 6 Cal. 279.

See Arrest 1.
Criminal Proceedings.
High Court 3, 4.
Joinder of Charges.
Judgment 3.
Jury.
Murder 1, 2, 3, 4, 5.
Practice (Appeal) 6, 7, 8.
Security 3.
Witness 8.

Practice (Parties).

1. Where a judgment holding that a suit was barred by limitation, was reversed on remand, a plaintiff who did not appeal against the original decision was held not entitled to the benefit of the reversal of that judgment. (P. C.) 2 P. C. R. 766 (11 B. L. R. 375; L. R. I. A. Sup. 135). *But see* (O. J. Ap.) I. L. R. 3 Cal. 738.

2. Act VIII of 1859 s. 102 refers to cases of substitution, in the case of the death of a sole plaintiff or surviving plaintiff, of a legal representative of such plaintiff, where there is no dispute; and s. 103 has reference only to a state of things existing before the hearing or at the hearing of the suit. (P. C.) 3 P. C. R. 371 (L. R. 4 I. A. 66; I. L. R. 2 Cal. 327).

3. A suit for property belonging to the Rajah of Kota was brought in the name of the "Political Agent and Superintendent of the Kota State, on the part of the Government of India:" *Held* that if the Rajah was the proprietor of the property, he should have been the plaintiff, or if his right and interest therein had passed to Government, the Government should have been the plaintiff, but the Political Agent and Superintendent of the Kota State was not entitled to sue for the property. I. L. R. 2 All. 690.

See Ancestral Property 11, 14.
Auction-Purchaser (Execution-Sale) 1.
Co-Sharers 3, 4, 8.
Enhancement 14.
Government 1.
Guardian and Minor 31.
Hindoo Law (Coparcenary) 9, 17.
Illegitimate 7.
Mahomedan Law 8.
Mortgage 132, 133.
Municipal 13.
Naib 1.
Partition 25.
Partnership 14.
Practice (Appeal) 16, 19.
Relief 4.
Rent 7, 8.

Practice (Review).

1. The Judges of the Sudder Court, in admitting an application for review, were held competent to make a qualified order leaving, in the Court which was to review the decision, a discretion as to the extent to which the review should be carried. (P. C.) 2 P. C. R. 124 (9 W. R. P. C. 23; 11 Moo. 487).

2. A mere refusal to grant a review of judgment cannot alter the judgment sought to be reviewed or the decree founded upon it. (P. C.) 2 P. C. R. 906 (20 W. R. 451).

3. The order of the Lower Appellate Court admitting a review of judgment after the expiration of 90 days from the date of the decree without proof of sufficient cause for the delay, was held to be illegal with all subsequent proceedings under it. (P. C.) 3 P. C. R. 67 (14 B. L. R. 373; L. R. 2 I. A. 58).

4. *Quære* whether Act VIII of 1859 s. 376 applies to orders, or merely to decrees. But even admitting that a review can take place of an order rejecting the judgment-debtor's objections to a sale in execution, the auction-purchaser is entitled to be summoned and heard in support of the order sought to be reviewed as provided by s. 378. (P. C.) 3 P. C. R. 294 (26 W. R. 44; L. R. 3 I. A. 230).

5. The power to admit a review, which is given by s. 376 *et seq.*, applies to an order rejecting an application for registration. (P. C.) 3 P. C. R. 300 (26 W. R. 50; I. L. R. 2 Cal. 131; L. R. 3 I. A. 221). *See* I. L. R. 2 Mad. 10.

6. With reference to ss. 376 and 378, there is not an absolute defect of jurisdiction in a Judge to entertain an application for review, whenever the parties have failed to show that there was either positive error in law, or new evidence to be brought forward which could not be brought forward on the first hearing. (P. C.) *Ib.*

7. The provisions of Act VIII of 1859 regarding reviews of judgment are applicable to orders passed under Act XXVII of 1860. I. L. R. 1 Cal. 101 (24 W. R. 376). *See also* I. L. R. 1 All. 287.

8. The production of an authority which was not brought to the notice of the Judge at the first hearing, and which lays down a view of the law contrary to that taken by the Judge, is not a sufficient ground for granting a review. If the Judge decided improperly upon a point of law, that is a matter for appeal, not for review. I. L. R. 1 Cal. 184 (24 W. R. 382).

9. A Judge has no power to allow a review of his predecessor's judgment on the ground that he comes to a different conclusion on the facts of the case. The general words used in Act VIII of 1859 ss. 376 and 378 are controlled and restricted by the particular words; and it is only the discovery of new evidence or the correction of a patent or indubitable error or omission, or some other particular ground of the like description, which justifies the granting of a review. I. L. R. 1 Cal. 197 (23 W. R. 438).

10. A review may be admitted on any ground, whether urged at the original hearing of the appeal or not, whenever the Court considers that it is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice. I. L. R. 1 Bom. 543.

11. Where a Judge has, in deciding a case, omitted to consider the effect of important documentary evidence filed with the plaint which was not taken issue upon, and which materially affects the merits of the case, he is competent under Act VIII of 1859 ss. 376 to 378 to grant a review and rehear the case. I. L. R. 1 Mad. 396.

12. Review of predecessor's judgment. *See* High Court 25. *See also* 9 *ante and post* 14.

PRACTICE (REVIEW) (*continued*).

13. Although the order itself granting a review of judgment is final; yet in appeal against the decision passed in review, objections may be taken that the review was improperly granted. An application for a review of judgment was made to a Court of Appeal, on the ground that certain very material documents on which the Court of first instance had relied had been summarily discredited without being inspected by the Court of Appeal, and that the Court of Appeal had erred in declaring the report of a Commissioner appointed by the Court of first instance for the purpose of making a local enquiry to be unworthy of reliance, because he was a mohurer of the Court of first instance: *Held* that, in granting the review applied for, the Lower Appellate Court had not executed the discretion vested in it by law. I. L. R. 1 All. 363.

14. Where a Judge allowed a review of his predecessor's judgment on the sole ground that it appeared to him that his predecessor's judgment had done injustice: *Held* that though the generality of the terms used in the sections of Act VIII of 1859 relating to review of judgment, *viz.:* "other good and sufficient reason" (s. 376) and "otherwise requisite for the ends of justice" (s. 378), confers a wide jurisdiction, this jurisdiction could not be held to authorize a Judge to revise and reverse his predecessor's decree on the ground above-mentioned. If the review is asked for in reference to the conclusions of fact drawn from the evidence, it should not be granted simply upon the same evidence. I. L. R. 2 Mad. 10.

15. The absence of a formal finding on an issue tried and decided by a High Court of first instance is not an error calling for review of judgment. I. L. R. 2 Mad. 58.

16. A party who not only had an opportunity of raising a question, but who did raise it in appeal and on argument abandoned it, cannot, under ordinary circumstances, be allowed to agitate the question on review. *Ib.*

17. The plaintiff in a suit applied, more than two years after the proper time, for a review of the judgment in such suit filing with his application a copy of a decision by the High Court, which had been passed subsequently to the date of such judgment, in support of a contention contained in his application which should have been, but was not, urged at the hearing of his suit. Such contention and the other arguments and statements contained in his application might have been adduced within the time allowed by law for an application for a review of judgment: *Held* that as such contention might have been urged at the first hearing of the case, there was no "just and reasonable cause" for preferring the application after time, and the Court of first instance was therefore not warranted in granting the application and reviewing its judgment. I. L. R. 2 All. 287.

18. An order under Act X of 1872 s. 278 by the Appellate Court, rejecting an appeal on a perusal of the petition of appeal and the copy of the judgment or order appealed against and without calling for the record and proceedings of the case, is a final order falling within the scope of s. 285, and is not subject to revision. (Cr.) I. L. R. 4 Bom. 101.

19. The Judge of a Mofussil Small Cause Court may grant an application for a review of judgment under Act X of 1877. I. L. R. 5 Cal. 699.

20. Any order made upon an application for a review of judgment, except an order absolutely rejecting the application, becomes, if it in any way modifies or alters the original order, although the modification or alteration extends only to the rectification of a clerical mistake, the final order in the case; and the party aggrieved by the original decree is entitled, although the modification or alteration was made in his favor, to treat the order upon review of judgment as the final decree or order in the case, and if it was made by a Court, an appeal from which lies to the Court of a District Judge, he is entitled to prefer his appeal at any time within thirty days from its date. I. L. R. 6 Cal. 22.

21. When an application for a review of judgment is made upon several grounds, one of which refers only to the question of adjudication of costs, and the Court to whom the application is made holds all the other grounds to be untenable, but is of opinion that there has been a clerical mistake in that part of its order or judgment which refers to costs, it may reject the application absolutely and permit the applicant to apply under Act X of 1877 s. 206, for a rectification of the clerical mistake; but if it does not do so, but, on the application for a review of judgment, amends the clerical mistake in its original order, the decree drawn up in conformity to this order becomes the final decree, and an appeal will lie against it if brought within the time prescribed for bringing an appeal against any other similar decree. *Ib.*

See Administrator-General 4.
Court Fees 10.
Evidence (Admissions and Statements) 8.
High Court 1, 3, 25.
Insolvency 20.
Jurisdiction 2.
Pauper Suit or Appeal 8.
Practice (Appeal) 26.
Privy Council 22.
Sale (in Execution of Decree) 49.

Practice (Suit).

1. A plaintiff cannot be entitled to relief upon facts or documents not stated or referred to by him in his pleadings. Thus, where plaintiff sued upon a simple money bond, and afterwards tendered in evidence another bond by which the principal defendant purported to secure a further advance on the security of her zemindaree estates: *Held* that plaintiff's cause of action upon the first bond lay only against the principal defendant, and that plaintiff could not, relying on the second bond, proceed against the other defendants. (P. C.) 2 P. C. R. 107 (9 W. R. P. C. 9; 11 Moo. 468).

The rule in the above case and in Eshanchunder Sing v. Shamachurn Bhutto, that a plaintiff must be held to the state of facts and equities alleged and pleaded by him in his plaint, or involved in or consistent therewith, applies also to the case made on the pleadings by a defendant. Therefore, where a defendant in a suit in ejectment averred in his written statement that the land in dispute was in fact his but had previously in 1865 been encroached on by the plaintiff who in 1865 was about to erect a building thereon, and that the defendant then, in order to avoid litigation, compromised the dispute, by payment to the plaintiff of a sum of money, and purchased the land and had since then remained in possession of it: *Held* that the only defence open to the defendant was that of purchase, and that he could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff commencing before 1865. (O. J.) I. L. R. 1 Bom. 209.

1*a*. When a plaintiff claims an estate, and the defendant being in possession resists that claim, he is bound to resist it upon all the grounds that it is possible for him according to his knowledge then to bring forward. (P. C.) 2 P. C. R. 46 (10 W. R. P. C. 1; 11 Moo. 50); 2 P. C. R. 653 (18 W. R. 163; 11 B. L. R. 158). *See also* 3 P. C. R. 540 (L. R. 5 I. A. 149; I. L. R. 4 Cal. 190); I. L. R. 1 All. 75, 316.

2. Where there is a general feeling in a district against a party to a suit, and such party feels that he is not likely to have a fair trial before the local Judge with that feeling in the district against him, his proper course is to petition the European Judge to remove the case into his Court and to try it in the first instance. (P. C.) 2 P. C. R. 379 (15 W. R. P. C. 8: 6 B. L. R. 495).

3. To proceed, so far as the practice of his Court will allow him, to recall and cancel an invalid order, is not simply permitted to, but is the duty of a Judge, who should always be vigilant not to allow the act of the Court itself to do wrong to the suitor. (P. C.) 2 P. C. R. 434 (7 B. L. R. 186; 14 Moo. 40).

4. Even if a plaintiff has been misled, by various representations of the defendant, into framing his suit in a particular way, still he can only recover according to his allegations and proofs, and cannot be allowed to set up an entirely new case. (P. C.) 2 P. C. R. 752 (19 W. R. 12; 11 B. L. R. 391; L. R. I. A. Sup. 131).

5. A finding by a Civil Court must be taken altogether;

PRACTICE (SUIT) (*continued*).

a party is not entitled to a decree upon one part of it where the decree would be inconsistent with another part of the same finding, unless he can show that such other part is incorrect. (P. C.) 3 P. C. R. 157 (23 W. R. 451).

6. A party, who is not willing to accept a finding in his favor in a suit, is not in a position to ask for a decree based upon it in the appeal, though he ought to have it in some future proceeding. (P. C.) *Ib.*

7. Where a defendant stated in an affidavit that a schedule annexed thereto contained a list of all the documents in his possession or power relating to the suit, and a certain other document was not mentioned in the schedule, though referred to by the defendant in his written statement: *Held*, on the hearing of a summons to consider the sufficiency of the affidavit, that the plaintiff could not cross-examine on the affidavit, but could only show that it was not an honest affidavit. The proper course was to apply for inspection of the particular document referred to in the written statement and omitted from the schedule if inspection was needed. I. L. R. 1 Cal. 178.

8. The High Court has power under Act X of 1877 to extend the time within which a defendant in a suit brought on a promissory note or other negotiable instrument can come in and obtain leave to defend. Therefore, in a suit in which it appeared that the defendant resided at Peshawur, the time was extended to twenty-eight days. (O. J.) I. L. R. 3 Cal. 539.

9. Practice to be followed where a party producing documents wishes to have a certain portion of them sealed up. (O. J.) I. L. R. 4 Cal. 835.

10. A party at whose instance interrogatories have been administered must put in the answers as part of his evidence if he wishes to use them at the hearing. (O. J.) I. L. R. 4 Cal. 836.

11. The effect of the proviso to s. 3 of Act X of 1877), taken in connection with the definition of the word "decree" in s. 2, is that, in all suits pending when that Act came into force, the practice and procedure to be followed down to the final result of such suits (*i. e.* when nothing remains to be done but to execute the decree or to appeal from it) are the same as previously existed, but that, in all subsequent proceedings in execution of the decree or in appeal from it, the practice and procedure provided by Act X of 1877 are to be observed. (O. J.) I. L. R. 3 Bom. 161.

12. Upon the death of a sole plaintiff, if no application to revive is made within sixty days from the date of the plaintiff's death, the suit abates. But the Court may, under Act X of 1877 s. 371, revive the suit, on the application of the legal representative of the plaintiff, within three years from the time when the right to apply accrues, if he can show that he was prevented by sufficient cause from continuing the suit. (O. J.) I. L. R. 5 Cal. 139.

13. Act X of 1877 s. 121 contemplates (1) leave to interrogate and (2) the service of the interrogatories through the Court. It is the duty of the Court under that section to determine whether the applicant should be allowed to interrogate the other side, but not to determine at that stage what questions the party interrogated should be compelled to answer. (O. J.) I. L. R. 5 Cal. 707.

14. Where an *ex-parte* order is made in chambers giving leave to interrogate, the party ordered to answer has a right to come into Court to have the order set aside if the case is one in which interrogatories should not have been allowed. (O. J.) *Ib.*

15. When an order for the administration of interrogatories is properly made, a party objecting to the interrogatories administered may, at his peril, omit to answer the interrogatories to which he objects; but the more prudent course is to file his affidavit in answer, stating in it his objections to answer such questions as he objects to. (O. J.) *Ib.*

16. Where interrogatories are scandalous, or in any way an abuse of the process of the Court, the Court may interfere at any stage. (O. J.) *Ib.*

17. The powers given to the Court by Act X of 1877 s. 136 should not be exercised except in extreme cases. (O. J.) *Ib.*

18. An order made by a lower Court, directing a suit to be re-admitted and registered on the file of the Court, is not appealable. I. L. R. 5 Cal. 711.

19. A suit was instituted by the trustee appointed under a will, against the executrix, for the purpose of having the trusts of the will carried into execution. A decree was made, and certain directions were given for the purpose of having a scheme settled, by which the trusts were to be carried out; but before the scheme was finally settled and approved, and while the proceedings were pending, the case was struck out of the board for want of prosecution. Subsequently, both the plaintiff and defendant died. The heirs of the plaintiff then instituted a suit against the Administrator-General as representing the estate of the defendant for carrying the trusts into execution, and prayed that their suit might be considered as supplemental to the original one: *Held* that the original suit, though no longer upon the board, was capable of revival, and that if no person were living whose consent might be obtained or to whom notice might be given, the Court might give leave without any such consent or notice, and that the proper course to pursue was to allow the plaintiffs to amend their plaint by putting it in the form of a petition under Act X of 1877 s. 372, the defendant being at liberty to put in any answer which he might have done, if the proceeding had been by petition in the first instance. (O. J. Ap.) I. L. R. 5 Cal. 726.

20. The words "pending the suit" in Act X of 1877 s. 372 relate to a suit in which no final order has been made. *Ib.*

21. A plaintiff ought not to be allowed to alter his case, so as to convert a suit of one character into a suit of another and inconsistent character. I. L. R. 4 Bom. 584.

22. The High Court cannot make an order of transfer of a case under Act X of 1877 s. 25, unless the Court from which the transfer is sought to be made has jurisdiction to try it. I. L. R. 6 Cal. 30.

23. In a suit brought by the plaintiffs against A, the summons was by mistake served upon B, who thereupon filed a written statement denying his liability and alleging that he was erroneously described in the title to the plaint. On the day of the hearing of the case the plaintiff's agent saw B for the first time, and ascertained that he was not the real defendant in the suit: *Held* that B, having done nothing to mislead the plaintiffs as to his identity, was entitled to his costs of suit; and also, that the case having come on for hearing, and there being nothing to show that the plaintiffs had been in any way deceived by B, the proper order to be made was for the dismissal of the suit. (O. J.) I. L. R. 4 Bom. 619.

See Adjournment 1, 2.
Compromise 1.
Documents 1, 2.
Evidence 3, 4, 5.
Government 1.
High Court 32.
Issues 1, 3, 4, 6.
Master and Servant 2.
Practice (Parties) 2.
Relief 4.
Written Statement.

Pre-emption.

1. The Court granting a decree to the plaintiff in a — suit is competent to grant a decree subject to the payment of the purchase-money within a fixed period; and if the decree-holder fails to comply with the condition imposed on him by the decree, he loses the benefit of the decree. I. L. R. 1 All. 132, 293. *See also* I. L. R. 1 All. 291.

2. Where a condition for — contained in a record-of-rights was intended to take effect at the time of a sale, and its language implied that the co-sharers in whose favor it was made were to be persons who were competent at that time to make a binding contract to accept or refuse an offer, no right of — accrued under the condition to a co-sharer who was a minor at the time of a sale and unrepresented by any person competent to conclude a binding contract on his behalf, whether it was assumed that the

PRE-EMPTION (*continued*).

condition arose out of special contract or general usage. Remarks on the right of — existing in villages in the N. W. P. I. L. R. 1 All. 207.

3. The right of — being a right weak in its nature, where such right is claimed under Mahomedan law, it should not be enforced except upon strict compliance with all the formalities prescribed by that law. I. L. R. 1 All. 283.

4. Under Mahomedan law the *tullub-i-mowasibut*, or immediate claim to the right of —, should be made as soon as the fact of the sale is known to the claimant; otherwise the right is lost; consequently, where plaintiff had failed to make the *tullub-i-mowasibut* until twelve years after the fact of the sale became known to him: *Held* that he had lost his right of —. *Ib.*

5. A Hindoo widow holding by inheritance her deceased husband's share in a village fully represents his estate as regards such share, and is entitled to prefer a claim to — as a shareholder in such village. I. L. R. 1 All. 452.

6. Under Mahomedan law, the legal forms to be observed under that law by a person claiming a right of — may be observed on behalf of such person by an agent or manager of such person. I. L. R. 1 All. 521.

7. The plaintiff in a suit to enforce a right of — in respect of certain shares in certain villages founded his claim on a special agreement contained in the village administration papers, and such claim was tried and determined in the Lower Court as so founded: *Held* that the plaintiff could not in appeal set up a claim to enforce such right founded on custom. I. L. R. 1 All. 563, 567. *See* (F. B.) 17 *post.*

8. Where the vendor is a Hindoo, a suit to enforce a right of — founded upon Mahomedan law is not maintainable. (F. B.) I. L. R. 1 All. 564.

9. A claim to the right of — founded on a special agreement does not exclude a claim to such right founded on Mahomedan law. I. L. R. 1 All. 567.

10. Where the plaintiff in a suit to enforce the right of — sued alleging that the actual price of the property was not the price entered in the sale-deed but a smaller price, and claimed the property on payment of such smaller price, and did not allege in his plaint that he was ready and willing to pay any price which the Court might find to be the actual price, and on the day that his suit was finally disposed of presented an application to the Court stating that he was ready and willing to do so: *Held* that the Court was not bound to allow him to amend his plaint, and bring into Court the larger sum. I. L. R. 1 All. 591.

11. Where a dwelling-house was sold as a house to be inhabited as it stood with the same right of occupation as the vendor had enjoyed, but without the ownership of the site: *Held* that a right of — under Mahomedan law attached to such house. I. L. R. 2 All. 99.

12. There is no rule of Mahomedan law giving one co-parcener any right of — where another co-parcener is the purchaser. (F. B.) I. L. R. 4 Cal. 831.

13. The ceremony of *tulub-ish-had*, or affirmation before witnesses, may, at the option of the pre-emptor, be performed in the presence of the purchaser only, though he has not yet obtained possession. I. L. R. 5 Cal. 509.

14. The greater portion of the lands of a certain village were divided into *thokes*, each *thoke* comprising a certain amount of land, and the rest of the lands were held in common according to the interests of the co-sharers in the village. The *wajib-ul-urz* contained the following provision regarding the right of —; "Each sharer is by all means at liberty to transfer his right and share, but first of all the transfer should be effected by him in favor of his own brothers and nephews who may be sharers, and in case of their refusal, in favor of the other owners of the *thoke*:" *Held* in a suit by a sharer in one *thoke* to enforce a right of —, under the *wajib-ul-urz*, in respect of a share in another *thoke*, that the fact that the plaintiff in common with all the sharers of the different *thokes* was a sharer in the common lands did not make her a sharer in the vendor's *thoke*, and she had therefore no right of — under the *wajib-ul-urz*. I. L. R. 2 All. 631.

15. The decree of the Court of first instance in a suit to enforce a right of — directed that the sum which that Court had ascertained to be the purchase-money should be deposited within one month from the date of the decree. Plaintiff appealed, contending that such sum was not the purchase-money. While the appeal was pending, the time fixed by the decree of the Court of first instance expired without any deposit having been made. The Appellate Court dismissed the appeal, fixing by its decree, of its own motion, a further time for the deposit: *Held* that the Appellate Court was competent to extend the time for making the deposit, and its action and order did not contravene the provisions of Act X of 1877 s. 214. I. L. R. 2 All. 744.

16. A co-sharer in undivided immoveable property of which a share is sold in execution of a decree, does not, under Act X of 1877 s. 310, acquire the right of — as against a stranger to whom such share has been knocked down, by merely asserting such right at the time of sale, and fulfilling the conditions of sale required by ss. 306 and 307 of that Act. He must bid at the sale and as high as the stranger before he can acquire a right of — under that section. I. L. R. 2 All. 850.

17. A *wajib-ul-urz* prepared and attested according to law is *primâ facie* evidence of the existence of any custom of — which it records, such evidence being open to be rebutted by any one disputing such custom. When such a *wajib-ul-urz* records a right of — by contract between the shareholders, it is evidence of a contract binding on all the parties to it and their representatives, and there will be a presumption that all the shareholders assented to the making of the record and in consequence were consenting parties to the contract of which it is evidence, and it will be for those shareholders repudiating such contract to rebut such presumption. (F. B.) I. L. R. 2 All. 876.

18. The cause of action of a person claiming the right of — in the case of a conditional sale arises when the conditional sale takes place and not when it becomes absolute; and therefore where a conditional sale took place in 1867, and after it had become absolute a person sued to enforce his right of — in respect of the property sold, basing his claim upon a special agreement made in the interval between the date of the conditional sale and the date that it became absolute, and alleging that his cause of action arose on the latter date, the suit was held not maintainable, the plaintiff having no right of — at the time of the conditional sale. I. L. R. 2 All. 884.

See Costs 5.
Limitation (Act IX of 1871) 41, 45.
,, (Act XV of 1877) 4, 15.
Puttee 2, 4, 5, 6, 7.
Res Judicata 12.

Prescription.

1. Possession for three years under an Act IV of 1840 award does not create a title by —. (P. C.) 3 P. C. R. 730 (L. R. 7 I. A. 73).

See Desai 2.
Embankment 1.
Limitation 41.
,, (Act IX of 1871) 4, 5, 27, 31.
Possession 7.
Res Judicata 39.

Presumption.

See Acquiescence 1.
Attorney and Client 1.
Benamee 1, 3, 4.
Bond 1.
Certificate 2.
Churs 7.
Co-Sharers 5, 6, 9, 11, 16.
Death 1.
Debtor and Creditor 1.

PRESUMPTION (*continued*).

See Divorce 5.
Dower 4.
Endowment 8, 19.
Enhancement 2, 11, 16, 27, 32.
Evidence 2.
" (Documentary) 11, 12, 13.
Gambling 1, 4.
Guarantee 1.
Guardian and Minor 6.
Hindoo Law (Adoption) 8.
" (Coparcenary) 1, 13, 25, 26.
" (Inheritance and Succession) 17.
Hindoo Widow 6.
Interest 4, 10, 14.
Jagheer 2.
Joint Family 1.
Julkur 3, 6.
Jurisdiction 8, 39.
Lease 1.
Legitimacy 1, 4.
Mahomedan Law 3.
Manager 1.
Marriage 3.
Mokurruree 6, 10.
Mortgage 1, 26.
Onus Probandi 1.
Oudh Estates 13.
Partnership 4.
Pension 3.
Pottah 1, 2.
Pre-emption 17.
Principal and Agent 5, 7.
Purdah Woman 6.
Road 1.
Sale (in Execution of Decree) 19.
Securities (Government) 2.
Security 3.
Watercourse 1.

Primogeniture.

See Hindoo Law (Inheritance and Succession) 3, 17, 21, 29.
Oudh Estates 12.
Raj 1.
Zemindaree 3, 5.

Principal and Agent.

1. *Del credere* agent. *See* Limitation (Act XIV of 1859) 4.

2. Where the sole question raised in both Courts in India was whether or not certain documents purporting to be an allowance of plaintiff's accounts by defendant's agent were signed by the agent, the Privy Council declined to allow defendant to raise before them the question as to the authority of the agent to bind him (defendant). (P. C.) 2 P. C. R. 684 (18 W. R. 233).

3. Agents buying indigo seed in a rising market under an order to purchase on the most favorable terms, cannot experiment by sowing a sample and waiting before they purchase to see whether it will germinate. They are only bound to act to the best of their judgment, and to use proper care and skill as agents in purchasing what they are ordered to purchase; and their action cannot be repudiated unless they are shown to have been guilty of negligence. (P. C.) 2 P. C. R. 756 (19 W. R. 65).

4. Where a man steps in during an auction-sale and assumes the character of a principal agent, and deposing another who is really acting as agent purchases the property, he cannot afterwards be allowed, in equity, to turn round and claim to have purchased, not for the principal, but for himself, and to obtain a profit out of his purchase. (P. C.) 3 P. C. R. 122 (23 W. R. 358; L. R. 2 I. A. 154).

5. In the absence of evidence to the contrary, it was inferred from the facts stated that the agent's service had come to an end, thus making it clear that he could have had no general authority. (P. C.) 3 P. C. R. 710 (L. R. 7 I. A. 8; I. L. R. 6 Cal. 218).

6. Formal notice of termination of the agent's authority is not necessary. It will be enough if the plaintiff knew of the agent having quitted defendant's service, and of his authority having been thus revoked. (P. C.) *Ib.*

7. The defendants let a steamship to the plaintiff for a certain term, and signed a charter-party, "by and on behalf of the owners of the steamship A." The charter-party was a time-charter to commence on arrival at Calcutta, and to terminate at one of certain ports; the steamer in the interim to ply to and from any port the charterers pleased. It was agreed that the steamer should be provided "with a proper and sufficient crew of seamen, engineers, stokers, firemen, and other necessary persons for working cargo with all despatch;" and that in taking and discharging cargo, "the master and his crew with his boats shall be aiding and assisting to the utmost of their power;" and that "the owners or agents of the said steamship shall be held responsible to the said charterers for any incapacity, want of skill, insobriety, or negligence on the part of master, officers, engineers, stokers, firemen, or crew, of the said steamship." The names of the principals were not disclosed in the charter-party, but were verbally disclosed before the charter-party was signed. In an action against the agents for damages for refusing to supply stevedores and other persons, in addition to the crew when loading and discharging cargo: *Held* that the presumption created by Act IX of 1872 s. 230 cl. 2 is merely a *primâ facie* one, and may be rebutted, and that the contract was not personally binding on the agents, because the *primâ facie* presumption of an intention to contract personally was rebutted by the language of the contract itself; also that the terms of the charter-party showed that the crew only were to assist in loading and discharging cargo; and that the plaintiff was not entitled to call on those responsible for the steamer to load and discharge cargo by stevedores instead of by the crew. (O. J.) I. L. R. 5 Cal. 71.

8. Reading Act IX of 1872, part II s. 230 with Act I of 1872 s. 92: *Semble*, that if on the face of a written contract, an agent appears to be personally liable, he cannot escape liability by evidence of any disclosure of his principal's name apart from the contract. (O. J.) *Ib.*

9. The rule of English law which makes the liability of an undisclosed principal subject to the qualification that he has not *bonâ fide* paid the agent, or that the state of accounts has not been altered, is not adopted in Act IX of 1872. (O. J.) I. L. R. 4 Bom. 447.

10. S. 232 is to be read as a qualification of the first portion of para. 1 of s. 231, which gives a principal a general right to enforce a contract entered into by his agent. S. 232 qualifies that general right by making it subject to the rights and obligations subsisting between the agent and the contracting party. (O. J.) *Ib.*

11. The second clause of para. 1 of s. 231 gives a party contracting with an agent the same rights against the principal only as he would have had against the agent; and s. 234 adds a further qualification to his rights as against the principal. (O. J.) *Ib.*

12. S. 232 adopts the qualification imposed by English law upon the rights of the principal to enforce a contract, *viz.* that he must take the contract subject to all the equities, in the same way as if the agent were the real principal; but it does not impose upon the right of the other contracting party the qualification laid down by English law, *viz.* that the principal has not paid the agent, or that the state of the account between the — has not been altered to the prejudice of the principal. The only qualification to the right of the other contracting party against the principal, is that imposed by s. 234, *viz.* that he has not induced the principal to act upon the belief that the agent only will be held liable. (O. J.) *Ib.*

See Contract 4.
Documents 2.

PRINCIPAL AND AGENT (*continued*).

See Gomashta.
Guarantee 1.
Husband and Wife 12.
Joinder of Parties 1.
Karanavan 4.
Limitation 22, 46.
,, (Act XIV of 1859) 8.
,, (Act IX of 1871) 3, 38, 64, 68, 106, 108, 109.
,, (Act XV of 1877) 18, 19.
Partnership 2, 4.
Payment 2.
Plaint 7, 10, 11, 12.
Pre-emption 6.
Railway 6, 7.
Res Judicata 9.
Right to Light and Air 2.
Service 3, 4, 5, 6.
Timber 1, 2.
Vendor and Purchaser 9.

Principal and Surety.

1. Plaintiff sued the widow Ranees and the infant son of a deceased Rajah, and based his claim on a bond signed by the Ranees. The plaint alleged that the debt was the Rajah's; but the bond recited that the Rajah had borrowed moneys from the plaintiff, and that the Ranees had also borrowed from the plaintiff, and it drew a distinction between the dealings and estate of the Rajah, and the dealings and estates of the Ranees: *Held* that the suit against the Ranees was in the nature of a claim against sureties, and that in the absence of proof that they knew the circumstances under which the Rajah contracted the loan, it could not be maintained against the Ranees. (P. C.) 2 P. C. R. 216 (11 W. R. P. C. 41; 3 B. L. R. P. C. 98).

2. The renewal of a surety-bond was held not to operate as a discharge of the old bond in a case where, after the giving of the new bond, a discovery was made, though unknown at the time, that frauds had been committed during the time that the old bond was in existence. (P. C.) 2 P. C. R. 448 (16 W. R. P. C. 11; 9 B. L. R. 364; 14 Moo. 86).

3. R sued M, B, C, and P for money due for goods supplied. Separate solehnamehs were filed by each of the four defendants, in which they admitted the debt, and each undertook to pay one-fourth thereof with interest by instalments, and each further agreed that if the other three should make default and the amount due by them should not be realised by the sale of their property, then he should be liable to make good the deficiency. A decree was passed by the Court in accordance with the terms of the solehnamehs. C and P each paid up their fourth shares, but M and B having failed to pay, R applied for execution against C and P in respect of the liability of M and B: *Held* that in the absence of proof that the whole property of B had been exhausted, R's application should not be allowed. (P. C.) I. L. R. 4 Cal. 331.

4. Where a decree for payment of a certain sum with interest was passed against certain defendants, as principal debtors and against other defendants as sureties, and it appeared that the decree-holder had allowed time to the principal debtors for the purpose of increasing the amount of interest: *Held* that the decree-holder was not entitled to interest for the time when he might and ought to have put up the property of the principal debtors for sale, when possibly it might have realised the whole of the debt then due. (P. C.) *Ib.*

5. Where N advanced money to K on a bond hypothecating K's property, and mentioning M as surety for any balance that might remain due after realisation of K's property, M being no party to K's bond but having signed a separate surety-bond two days subsequent to the advance of the money: *Held* that the subsequent surety-bond was void for want of consideration under Act IX of 1872 s. 127. The legal position of the surety considered and determined. I. L. R. 1 All. 487.

6. F was required by the Magistrate, under Act X of 1872, to furnish two sureties who should be responsible for his good behaviour each in a certain sum. S agreed to become a surety on condition that F would deposit with him the amount of the security. F made the deposit, and S became a surety. The period for which S was responsible for F's good conduct having expired without F committing any act to forfeit the security, and S refusing to return the deposit, F sued S to recover the deposit: *Held* that, as the consideration for the agreement defeated the object of the law, the consideration was unlawful, and F was not entitled to relief. I. L. R. 1 All. 751.

7. The acceptance of interest in advance by a creditor, as a general rule, operates as a giving of time to the principal debtor, and consequently as a discharge to the surety, unless the surety knows of and consents to the advance. The question as to whether an advance of interest operates as a giving of time to the principal debtor, is a mixed question of law and fact. I. L. R. 4 Cal. 132. *Affirmed by* (P. C.) 3 P. C. R. 760 (I. L. R. 6 Cal. 241).

8. The present applicant having taken out execution of a decree held by him, and the judgment-debtor having appealed to the District Court, the two opponents became sureties under Act VIII of 1859 s. 338 that the judgment-debtor would "obey and fulfil all such orders and decrees as should be given against him in appeal," and, in default of his so doing, they bound themselves "to pay jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of Rs. 812-8, adjudge": *Quære* whether the obligation of the sureties to fulfil the decree of the Appellate Court was confined to the first decree of that Court, or extended to the final decree which it passed upon the case being remanded by the High Court in special appeal. I. L. R. 2 Bom. 654.

9. Plaintiff was nominally surety, though really the principal, in the case of two contracts entered into by one R with the Executive Engineer of A. On completion of the works, the Executive Engineer handed over to plaintiff a cheque on the Government treasury for the amount due on the first contract. Before the cheque was presented by plaintiff for payment, the defendant, who was the judgment-creditor of R, served the Executive Engineer with a notice attaching any moneys in his hands due by him to R. The Executive Engineer thereupon stopped payment of the cheque, the amount of which was eventually paid to the defendant: *Held* that, at the date of the attachment, the cheque had become the property of the plaintiff, and that the defendant should refund the amount received by him. I. L. R. 3 Bom. 49.

10. The second contract was sold to plaintiff by R, and the account in the Executive Engineer's Office relating to it was closed, showing a sum of money to R's credit at the date of defendant's attachment: *Held* that plaintiff, being the only person really interested, was entitled to this sum also, for, although the Executive Engineer would have been legally justified in paying it to a third person such as the defendant, the judgment-creditor, who, if the sum was paid to him, must refund it to plaintiff. *Ib.*

11. The appellants became sureties, under Act VIII of 1859 s. 338, that the judgment-creditor would "obey and fulfil all such orders and decrees as should be given against him in appeal;" and, in default of his so doing, they bound themselves "to pay jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of Rs. 812-8, adjudge:" *Held* that the obligation of the sureties was not confined to the first decree of the Appellate Court, but extended to the final decree which it passed upon the case being remanded by the High Court in special appeal. (F. B.) I. L. R. 3 Bom. 204.

12. Plaintiff held a money-decree against M, who was arrested in execution of it. On being brought to the Court, however, M applied for his discharge as an insolvent under Act VIII of 1859 s. 273. He was released on the security of G, who executed a bond for the appearance of M at the enquiry into his insolvency. The defendant attested the bond and wrote in the attestation that G was a solvent person. In consequence of the non-appearance of M, the plaintiff sought to execute his decree against the surety G, who on his arrest also applied for his discharge on the ground of his insolvency, and was discharged after enquiry.

Principal and Surety (*continued*).

The plaintiff thereupon sued the defendant for the amount of his decree and cost of execution, on the ground of his representation in the attestation that G was solvent. The Subordinate Judge rejected, but the District Judge, in appeal, allowed the plaintiff's claim: *Held* by the High Court on second appeal, that the plaintiff had no cause of action against the defendant, whether the suit was considered as brought upon a covenant or misrepresentation, as the defendant was neither a co-obligor in the security bond of G, neither did he make any promise in the attestation of it to compensate the plaintiff for the non-appearance of M, nor any representation to the plaintiff. *Quære* whether the nazir was liable to the plaintiff for negligence in not taking a proper surety. I. L. R. 4 Bom. 465.

See Bill of Exchange 1.
Bond 4.
Guarantee.
Hindoo Law (Coparcenary) 22.
Interest 20.
Privy Council 45.
Small Cause Court 5, 80.

Priority.

1. Of birth of son, and not of marriage where different wives. *See* Hindoo Law (Inheritance and Succession) 11.

See Attachment 7, 17.
Auction-Purchaser (Execution-Sale) 3.
Certificate 4, 5, 6, 11.
Hindoo Law (Inheritance and Succession) 6, 9, 21, 23, 24, 36, 41, 48.
Hindoo Widow 27.
Limitation (Act IX of 1871) 46.
Mortgage 24, 32, 44, 45, 53, 63, 77, 78, 92, 98, 104, 128.
Putnee 15.
Registration 10, 18, 37, 43, 45, 48, 54, 55.
Sale (in Execution of Decree) 27, 32.
Vendor and Purchaser 3.

Prisoner.

See Evidence (Admissions and Statements) 3.
Small Cause Court 1.

Privilege.

1. Exclusive privilege. *See* Patent.

See Arrest 4.
Attorney and Client 7, 11.
Declaratory Decree 14.
Documents 1, 2, 3.
Grant 6.
Landlord and Tenant 11.
Libel 3, 5, 6.
Mortgage 36.
Purdah Woman 7.
Small Cause Court 1.
Will 58.

Privy Council.

1. The — will not reverse decrees of the Courts of India, except in very extraordinary cases, merely on the effect of evidence, or the credibility of witnesses. (P. C.) 2 P. C. R. 56 (10 W. R. P. C. 10; 11 Moo. 194).

2. A High Court should record the grounds of its decision in a case appealed to the —. (P. C.) 2 P. C. R. 206 (11 W. R. P. C. 33; 2 B. L. R. P. C. 72; 12 Moo. 495).

3. A party cannot for the first time, in appeal to the — urge that the Zillah Judge had improperly rejected evidence tendered by him. (P. C.) *Ib.*

4. The — will not interfere with the concurrent judgments of the Courts below on questions of fact. (P. C.) 2 P. C. R. 208 (11 W. R. P. C. 35; 2 B. L. R. P. C. 85). *See also* 2 P. C. R. 442 (16 W. R. P. C. 5; 9 B. L. R. 150), 2 P. C. R. 684 (18 W. R. 233), 2 P. C. R. 816 (19 W. R. 275), 3 P. C. R. 157 (23 W. R. 451).

Unless on proof of miscarriage on certain points specified. (P. C.) 2 P. C. R. 375 (15 W. R. P. C. 5; 6 B. L. R. 168).

And especially where the question relates to an item in a partnership account, the proof of which depends upon the testimony of native gomashtas, supported by native books not produced before their Lordships. (P. C.) 3 P. C. R. 161.

5. An objection to an appeal, on the ground that the amount in dispute is below the appealable amount, comes too late before the — at the hearing of the appeal. The costs of the suit should not be taken into consideration in estimating the amount in dispute. (P. C.) 2 P. C. R. 257 (12 W. R. P. C. 29; 3 B. L. R. P. C. 27; 13 Moo. 85).

6. In calculating the period of six months allowed for appealing to the —, the date on which the decree was pronounced or dated should be excluded. (P. C.) 2 P. C. R. 291 (13 W. R. P. C. 17).

7. Rules to be observed by Proctors, Solicitors, Agents, and other persons admitted to practise before the —. (P. C.) 2 P. C. R. 329 (13 W. R. P. C. 45).

8. When evidence of doubtful admissibility has been received in a cause in India, the — will deal with the case as they think substantial justice requires, and will not allow any merely technical objections to prevail. (P. C.) 2 P. C. R. 371 (6 B. L. R. 509; 13 Moo. 519).

9. The guardian of an infant, who filed an appeal to the —, has no right to insist that the appeal should go on, when the infant, on coming of age, applies to withdraw from the appeal. If the guardian has incurred costs, he may have a claim to be recouped from the estate of the infant, if he has any. (P. C.) 2 P. C. R. 391 (15 W. R. P. C. 19; 6 B. L. R. 283; 13 Moo. 585).

10. Although it is open to parties before the — to allege a mistake of law not raised in the Court below, it must be clearly shown before the — that the mistake was really made by the Judge below, and that the decision is in fact attributable to the mistake. (P. C.) 2 P. C. R. 442 (16 W. R. P. C. 5; 9 B. L. R. 150).

11. Where the certificate of the High Court was to the effect that, in consideration of the Court deciding the appeal before it upon one point only (*i.e.* the validity of the mookhtarnameh), the counsel for the appellant, in the presence and with the consent of the son and agent of the appellant, stated to the Court that he would not appeal from the decision as to the validity of the mookhtarnameh: *Held* that there was good and sufficient consideration for such an agreement, and that the appeal, having been brought in violation of good faith, could not be entertained. In awarding costs, the case was held to be one to justify the — in giving a sum of money *nomine expensarum.* (P. C.) 2 P. C. R. 479 (9 B. L. R. 460; 14 Moo. 208).

12. Inclusion of superfluous documents in the records of a case prohibited. (P. C.) 2 P. C. R. 519 (17 W. R. 106). *See also* 2 P. C. R. 869 (20 W. R. 95).

13. The — will not interfere with a finding upon a boundary question, except in a case of plain miscarriage. (P. C.) 2 P. C. R. 549 (17 W. R. 285; 14 Moo. 453). *See also* 25 *post.*

14. Where the — reversed a decision of the High Court as based upon the assumed probabilities of the case, instead of the evidence before it. (P. C.) 2 P. C. R. 648 (18 W. R. 120).

15. The — will allow but one set of costs to respondents in the same interest. (P. C.) 2 P. C. R. 653 (18 W. R. 163; 11 B. L. R. 158).

16. Execution of orders of the —; procedure under Act II of 1863 s. 14. (P. C.) 2 P. C. R. 668 (18 W. R. 175).

17. Effect of declarations of the —, and consequence of not giving effect to them. (P. C.) *Ib.*

18. The — will only under special circumstances grant an appellant from a judgment of the High Court in special appeal, *nunc pro tunc*, special leave to appeal from the decrees of the inferior Courts in India on the facts. (P. C.) 2 P. C. R. 686 (18 W. R. 299; 12 B. L. R. 107).

PRIVY COUNCIL (*continued*).

19. The — would not interfere with concurrent judgments where plaintiff claimed a share of joint family property belonging to defendant and himself, and defendant denied that the property was joint. (P. C.) 2 P. C. R. 816 (19 W. R. 275).

20. A plaintiff, who did not object before the High Court to the first Court having delegated the decision of the main point in the case to an Ameen, was not allowed to take that objection before the —. (P. C.) 2 P.C. R. 865 (20 W. R. 44; 12 B. L. R. 210).

21. There must be *uberrima fides* on the part of those who come for leave to appeal, on special grounds, to the —. Where the petition contained a material mis-statement, the appellant was not allowed the costs of the appeal. (P. C.) 3 P. C. R. 72 (23 W. R. 113; 14 B. L. R. 394; L. R. 2 I. A. 71).

22. In a suit to set aside two decrees which declared that certain bond-debts, incurred by the *shebait* of an idol, should be realized from the rents or profits of the dewuttur mehal: *Held* that the High Court was right in holding that, in the absence of proof of fraud or collusion, it could not re-open and review those judgments, and that the —, since it was not sitting in appeal to determine whether the conclusions of fact or of law on which those decrees were founded were right or wrong, could properly deal only with the operation and effect of the decrees as they stood. (P. C.) 3 P. C. R. 102 (23 W. R. 253; 14 B. L. R. 450; L. R. 2 I. A. 145).

23. The — may at any stage of an appeal hear the objection that the appeal is without authority because the leave to appeal is *ultra vires*. (P. C.) 3 P. C. R. 148 (15 B. L. R. 221; L. R. 2 I. A. 205).

24. Special leave to appeal *nunc pro tunc* was refused in this case where one of the principal questions was that the proper amount was not paid into Court under a compromise, the alleged deficiency being Rs. 7 only; and where the other and substantial ground was that in a suit for foreclosure of mortgage, before a decree was finally obtained, a compromise was entered into, in pursuance of which the mortgagor paid into Court a sum of money which the mortgagee refused to accept, and which the Court thereupon irregularly directed to be repaid to the mortgagor without notice. (P. C.) *Ib.*

25. In a suit which was essentially one of boundary, and in which an order had been previously made by the —, the — declined to go behind that order, and held that so much of the judgment of the High Court as reopened on fresh evidence what had previously been decided must be set aside. (P. C.) 3 P. C. R. 225 (25 W. R. 157).

26. Parties appealing to the — upon the merits ought not to take the general decree of the High Court, but should ask for details. (P. C.) 3 P. C. R. 298 (26 W. R. 48).

27. A suit for possession and redemption, in which a third party intervened claiming that the plaintiff had conveyed to him one half of the property in dispute, was dismissed. On appeal by plaintiff in which the intervenor did not appear, the Lower Appellate Court merely reversed the decree of the first Court, and the High Court affirmed the decree of the Lower Appellate Court. The —, in remanding the case to the High Court to amend their decree in conformity with their judgment, by declaring affirmatively what the plaintiff was entitled to recover, observed that the question ought to have been raised in the High Court. (P. C.) *Ib.*

28. This case was remanded for further enquiry and report by the High Court, the Privy Council being dissatisfied with the manner in which the Judges of the High Court had overruled the Lower Court on a question of fact, by rejecting certain entries (in books which, in the conflict of oral testimony on both sides, were brought into Court to show on which side the truth lay) as not genuine, from their own observation of the books, without taking evidence or rehearing the case on that point. (P. C.) 3 P. C. R. 414.

29. A Commissioner in Oudh has no authority to admit on appeal to the — from a decree of his affirming a decree of the Settlement Officer of that district, notwithstanding that his decree was final; the words "Court of Highest Civil jurisdiction in any province" in Act II of 1863 having reference to the general jurisdiction of the Courts, and not to the finality of their decisions in particular cases. (P. C.) 3 P. C. R. 427 (L. R. 4 I. A. 178; I. L. R. 3 Cal. 522).

30. To avoid delay and expense in this case, their Lordships granted special leave to the appellant to appeal, and allowed the case to be argued *nunc pro tunc*. (P. C.) *Ib.*

31. An order of the — cannot be reopened or varied unless by some accident, without any blame and without any default on the part of the party himself, he has not been heard and an order inadvertently made as if he had been heard; but not on the mere ground that he was not properly represented upon the appeal or cited to appear to it, and where it could not be said that there had been no default on the part of the petitioner. (P. C.) 3 P. C. R. 553 (L. R. 5 I. A. 171; I. L. R. 4 Cal. 184).

32. The objection that the petitioner was never properly made a party to the suit in the Courts below, and that the proceedings in India, so far as he was concerned, were *coram non judice*, was held to be one which could only be properly tried in a new suit, since, if the facts alleged could be established, the final decree in the suit, considered independently of the Order in Council, and merely as a decree of the Indian Courts, would probably not be *res judicata* against the petitioner. (P. C.) *Ib.*

33. In a former appeal the — held that both Courts were wrong on the question of limitation, and, as to the other plea in bar (*res judicata*), that plaintiff whose application to intervene in a former suit between his alleged vendors and the defendants had been refused, could not be bound by the decree in that suit, and remanded the case for trial on the merits. In the present appeal the — declined to allow the question as to whether there ever was a conveyance or not from the plaintiff's vendors to be re-opened as one decided by their Lordships on the former occasion. (P. C.) 3 P. C. R. 604.

34. Their Lordships always regret to have to hear an appeal *ex-parte*; but their decision upon it, when heard, must stand as if all the arguments which the respondents, if present, could have raised upon the case had been addressed to them; the absent parties must bear the consequence of their own laches. (P. C.) *Ib.*

35. No appeal lies, under the Letters Patent s. 15, from an order of a Bench of the High Court, granting a certificate that a case is a fit one for appeal to the —. I. L. R. 1 Cal. 102 (24 W. R. 150).

36. Where it appeared that no deposit had been made by the appellant in an appeal to the — to defray the cost of transcribing etc., as provided by Act VI of 1874 s. 11, no steps taken to prosecute the appeal, and no security deposited for the costs of the respondents since the presentation of the petition of appeal, the High Court granted a rule calling on the appellant to show cause why the proceedings on appeal should not be stayed, and on his not appearing to show cause, ordered that the appeal should be struck off the file. (O. J.) I. L. R. 1 Cal. 142.

37. Where there were two concurrent decisions on facts, an application to appeal to the — was refused, the right of appeal from a decision of the High Court on its appellate side, simply on the ground that the subject-matter of the suit was above Rs. 10,000, having been taken away by Act VI of 1874 s. 5. I. L. R. 1 Cal. 431.

38. The provision in the above section that, where there are concurrent decisions on facts, the case must, in order to give a right of appeal to the —, involve some substantial question of law, is not *ultra vires* of the Indian Legislature as being a curtailment of the jurisdiction given to the High Court by the Letters Patent, 1865, cl. 39. Cl. 39 does not rest for its authority on the 24 and 25 Vic. c. 104, and was not inserted in pursuance of that Act. Consequently any power which it gives to admit an appeal to the — from a decision of the High Court on its Appellate Side, is not one of the powers which the High Court is, by the first part of 24 and 25 Vic. c. 104 s. 9, commanded to exercise. 24 and 25 Vic. c. 67 s. 22 must be read with 24 and 25 Vic. c. 104 ss. 9 and 11. By the express words of s. 9, all previously-existing powers were reserved to the High Court provided the Letters Patent did not interfere with them, and as to these powers the Governor-General in Council is expressly empowered to legislate. Even if therefore the power to admit an appeal to the — were conferred by the Letters Patent, under the authority of 24 and 25 Vic. c. 104, it was, being a new power, subject to the legislative power of the Governor-General in Council. I. L. R. 1 Cal. 431.

39. The petitioners had obtained a certificate on the

PRIVY COUNCIL (*continued*).

1st of September to the — from a decision passed against them by the High Court on the 4th of May. Accordingly the period during which they were required to deposit the amount for the translation of the record, under Act VI of 1874 s. 11 cl. *b*, expired on the 4th of November. The Offices of the Court re-opened after the vacation on the 23rd of October, but the Benches did not begin to sit till the 16th of November. On the last-mentioned date the petitioners brought in the money, and it was refused by the Officer of the Court as being too late: *Held* that it was rightly refused, and that the Court had no power to grant permission to deposit it after the prescribed time. I. L. R. 2 Cal. 128.

40. A substantial question of law which, by Act VI of 1874 s. 5, the appeal must involve, in order to give an appeal to the — in a case where the decree appealed from affirmed the decision of the Court below, is not limited to a question of law arising out of the facts as found by the Courts from whose decisions it is desired to appeal. A question of law arising on the evidence taken in the case is, without reference to the findings of the Lower Courts, sufficient to found an appeal. (O. J.) I. L. R. 2 Cal. 228.

41. The requirements of Act VI of 1874 s. 11, as to the deposit of costs, are not absolutely imperative. The High Court has power in its discretion to modify them; and when the period for making the deposit expires on a day when the Offices of the Court are closed, it is a reasonable exercise of that discretion to allow the deposit to be on the day they re-open. (O. J.) I. L. R. 2 Cal. 272.

42. The High Court has not any power, under Act X of 1877, or cl. 31 of the Letters Patent (which is repealed by Acts VI of 1874 and X of 1877), to grant leave to appeal to the — from an order of the Court remanding a suit for re-trial. I. L. R. 1 All. 726.

43. Nor from an interlocutory order, *e.g.* an order of the High Court annulling, as void for want of jurisdiction, an order of the District Judge recalling to his own file the proceedings in execution of a decree pending in the Court of a Subordinate Judge. I. L. R. 2 All. 65.

44. Before a decree-holder in the District Court can obtain execution of a decree which has been affirmed by the —, he must produce, on the application for execution, a certified copy of the order passed by Her Majesty in Council. I. L. R. 5 Cal. 329.

45. An appeal was preferred to the — from a final decree passed upon appeal by the High Court, and B and certain other persons on behalf of the appellant gave security for the costs of the respondent. The — dismissed the appeal, and ordered the appellant to pay the costs of the respondent. The respondent applied to the Court of first instance for the execution of that order against B and the other persons as sureties: *Held* that, under Act X of 1877 ss. 610 and 253, such order could be executed against the sureties. (F. B.) I. L. R. 2 All. 604.

See Acquiescence 1.
Ajmere Courts 1.
Arbitration 3.
Attachment 8.
Churs 3, 4.
Compromise 2.
Costs 1.
Dower 10.
Enhancement 11.
Execution of Decree 15.
Grant 2.
Guardian and Minor 8.
Hindoo Widow 18, 20.
Interest 3, 5, 6.
Limitation 3, 5.
„ (Act XIV of 1859) 6.
„ (Act IX of 1871) 105.
„ (Act XV of 1877) 1, 35.
Maintenance 1.
Mesne Profits 1.
Plaint 1.
Pleader 2.
Possession 7.
Practice (Appeal) 1.
„ (Commissions) 3.
Principal and Agent 2.
Watercourse 2.
Will 3.

Probate.

See Court Fees 9.
Endowment 38, 39.
Execution of Decree 26.
Probate Duty.
Will 19, 20, 23, 24, 26, 40, 41, 42, 45, 48, 52, 54, 55, 56.

Probate Duty.

See Court Fees 9.
Will 24, 29, 30, 40, 41.

Proclamation.

See Attachment 19.
High Court 37.
Sale (in Execution of Decree) 19, 20, 54.
Service Tenure 9.

Profession Tax.

See Municipal 11.

Projection.

See Limitation 41.

Promissory Note.

1. Where a — is payable by instalments and contains a stipulation that, on default in payment of the first instalment, the whole amount is to become due, a suit to recover the whole amount on default made in payment of the first instalment cannot be brought under Act V of 1866. (O. J.) I. L. R. 1 Cal. 130.

2. The plaintiff, in a suit on a — written on unstamped paper, is not debarred from giving independent evidence of consideration. I. L. R. 3 Cal. 314.

3. A suit in which a decree has been obtained against one of several joint makers of a — is a bar to a subsequent suit against the others. The effect of Act IX of 1872 s. 43 is not to create a joint and several liability in such a case. That section merely prohibits the defendant in such a suit pleading in abatement, and thus places the liability arising from the breach of a joint contract and the liability arising from a tort on the same footing. (O. J. Ap.) I. L. R. 3 Cal. 353. *See* I. L. R. 5 Cal. 291.

See Assignment 5.
Bill of Exchange 3.
Interest 11.
Joinder of Causes of Action 4.
Joint Stock Company 7.
Limitation 18.
„ (Act XIV of 1859) 21, 29, 30.
„ (Act IX of 1871) 7, 30, 34.
„ (Act XV of 1877) 12.
Practice (Suit) 8.
Securities (Government).
Stolen Property 2, 3, 4.

Property.

See Ancestral Property.
Attached Property.
Conveyance (Transfer and Assignment) 1.
Decree 11.
Forfeiture 1.
Immoveable Property.
Money-Decree 4.
Moveable Property.
Property Seized by Police.
Right of Property.
Self-Acquired Property.
Separate Property.
Streedhun.

Property Seized by Police.

1. A was charged before the Police with theft of certain property. The Police considered that no offence had been committed, and reported the matter to a 2nd Class Magistrate, who, agreeing with the Police, ordered the property to be restored to A. On application by the complainant, the District Magistrate found that A had removed, though not dishonestly, the property from B, a deceased person, and ordered the property to be given by the Police to B's heirs; it was so given: *Held* that the provisions of chap. XXX Act X of 1872 do not apply to such a case. Ss. 415, 416, and 417 contemplate proceedings preliminary to, and independent of, enquiry. Upon general principles, where there has been an enquiry, or a trial, and the accused person is discharged or acquitted by any Criminal Court, that Court is bound to restore that property into the possession of the person from whom it is taken, unless, as provided for by s. 418, such Court is of opinion that "any offence appears to have been committed" regarding it; then such order as appears right for the disposal of the property may be made. The High Court cannot direct the restoration of the property already delivered by the Police under the illegal order of the District Magistrate. (Cr.) I. L. R. 1 Bom. 630.

2. Where a person was accused of dishonestly receiving stolen property knowing it to be stolen, and was discharged by the Magistrate on the ground that there was no evidence that the property was stolen: *Held* that the Magistrate was competent, believing that the property was stolen, to make an order under Act X of 1872 s. 418 regarding its disposal. (Cr.) I. L. R. 2 All. 276.

Proportion.

See Cesses.
Co-Sharers 4, 5, 14, 15, 16, 17, 18.
Enhancement 16, 19.
Mortgage 121.
Puttee 7.
Res Judicata 30.
Sale (in Execution of Decree) 47, 48, 54.
Shipping 2.

Prosecutor.

See Criminal Proceedings 21.
High Court 34.
Magistrate 2.
Public Servant 6.
Stamp Duty 7.

Prostitution.

1. To constitute an offence under s. 372 Penal Code, it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person. (Cr.) I. L. R. 1 Mad. 164.

2. In a suit by dancing girls of a temple claiming to have by custom a veto upon the introduction of any new dancing girls into the service of that temple, and praying for an enquiry as to whether the Dharmakarta of the temple was a fit and proper person to hold that office: *Held* that (assuming that plaintiffs had established that, by the custom of the pagoda, they had the rights they claim, and that the custom, in some respects, fulfilled the requisites of a valid custom) the Court could not shut its eyes to the fact that, by making the declaration they prayed for, it would be recognizing an immoral custom, *viz.* for an association of women to enjoy a monopoly of the gains of —, a right which no Court could countenance. I. L. R. 1 Mad. 168. *But see* I. L. R. 1 Mad. 356.

3. Certain persons, falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in the full belief that such representation was true: *Held* that such persons could not be convicted of offences under ss. 372 and 373 Penal Code. (F. B. Cr.) I. L. R. 2 All. 694.

See Contagious Diseases 1, 2.
Dower 15.
Guardian and Minor 19.
Naikins.

Provocation.

See Murder 7.

Publication.

See Libel 1, 4, 5.
Marriage 9.
Notification.

Public Debt Office.

See Bailment 4.
Stolen Property 2, 3, 4.

Public Highway.

See Municipal 2.
Public Thoroughfare.

Public Policy.

See Bond 2.
Caste 1.
Champerty 2, 3, 4.
Principal and Surety, 6.

Public Servant.

1. Where a village accountant and a Village Moonsiff's peon had been convicted under s. 217 Penal Code of having disobeyed the direction of law contained in Act X of 1872 s. 90: *Held* that they were wrongfully convicted as not bearing the character which raises the obligation under the latter section. (Cr.) I. L. R. 1 Mad. 266.

2. The direction of law mentioned in s. 217 Penal Code means a positive direction of law such as those contained in Act X of 1872 ss. 89 and 90 and cannot be made to extend to the mere general application on every subject not to stifle a criminal charge. (Cr.) *Ib.*

3. K, a Police Officer, employed in a Criminal Court to read the diaries of cases investigated by the Police and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided by the Court in which the persons accused were convicted and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as a motive or reward for any of the

PUBLIC SERVANT (*continued*).

objects described in s. 161 Penal Code, but as *dustooree*: *Held* that K was not, under these circumstances, punishable under s. 161 but under s. 165 Penal Code. (Cr.) I. L. R. 1 All. 580.

4. The accused was charged under s. 217 Penal Code, but the charge did not distinctly state what the direction of the law was which he disobeyed, and how he disobeyed it: *Held* that, when accused has been convicted on a charge expressed in vague terms, the prosecution on appeal should be limited to the particular sense in which the charge has been understood at the trial. (Cr.) I. L. R. 2 Bom. 142.

5. It is sufficient for the purpose of a conviction under s. 217 Penal Code, that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a —, and that he has done this with the intention of saving a person from legal punishment; it is not necessary to show that in point of fact the person so intended to be saved had committed an offence or was justly liable to legal punishment. (Cr.) I. L. R. 3 Cal. 412.

6. A person appointed by the Government Solicitor, with the approval of Government, and under an arrangement made by the Governor-General in Council, to act as Prosecutor in the Calcutta Police Courts, is a — within the meaning of s. 21 Penal Code. I. L. R. 3 Cal. 497.

7. Act X of 1872 s. 466 extends to all acts ostensibly done by a —, *i.e.* to acts which would have no special signification except as acts done by a —. Therefore a *mahalkari* charged with fabricating the proceedings of a case decided before himself, could not be tried on that charge except with the sanction specified in that section. (Cr.) I. L. R. 2 Bom. 481.

8. A *mahalkari* falls within the class of public servants contemplated in para. one of s. 466; a sanction for his prosecution by the District Magistrate is therefore sufficient. (Cr.) *Ib.*

9. Where a — makes an order or issues a notification under Act X of 1872, it is not within the province of judicial authority to question the propriety or legality of such order or notification until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not. (Cr.) I. L. R. 6 Cal. 88.

See Contempt of Lawful Authority of Public Servant.
Ferry 1.
Illegal Gratification 1.
Municipal 10.

Public Spring or Reservoir.

1. The words — used in s. 277 Penal Code do not include a public river. The strewing of branches in a river for fishing purposes was therefore held to be no offence under that section. (Cr.) I. L. R. 2 Cal. 383.

Public Thoroughfare.

1. While certain land formed part of a certain —, F had immediate access to such — and the use of a certain drain. The Municipal Committee sold such land to M and constructed a new —. M used and occupied such land so as to obstruct F's access to the new — and his use of the drain. F therefore sued him to establish a right of access to the new — over such land and a right to the use of such drain: *Held* that, having suffered special damage from his acts, F had a right of action against him, and that such right of action was not affected by the circumstance that M had acquired his title to the land from the Municipal Committee, inasmuch as the Municipal Committee could not have dealt with the old — to the special injury of F, and, had it closed the same, would have been bound to provide adequately for his access to the new — and for his drainage. I. L. R. 1 All. 557.

See Obstruction 1, 2, 3, 4, 5, 6, 7, 8.
Public Highway.

Public Works Department.

See Principal and Surety 9, 10.

Puchis Sowal.

See Raj 5.

Punchayet.

See Marriage 16.

Pundits.

See Arbitration 20.
Hindoo Law 1.

Punishment.

1. Enhancement of —. *See* Criminal Proceedings 4, 5; Enhancement 34; Practice (Appeal) 6.

2. Where a person commits an offence punishable under chap. XII or XVII Penal Code with three years' imprisonment, and previously to his being convicted of such offence, commits another such offence under either of such chapters, he is not subject on conviction of the second offence to the enhanced — provided in s. 75. I. L. R. 1 All. 637.

See Capital Punishment.
Imprisonment.
Murder 6.
Penal Servitude.
Practice (Criminal Trials) 4.
Public Servant 5.
Transportation.
Whipping.

Punjab Code.

s. 19 cl. 4. *See* Mortgage 21.

Purchase-Money.

1. The *onus* of proving non-payment was thrown upon plaintiff in a suit to recover the balance of — alleged to have been due upon the sale of a decree, where plaintiff's case was that the consideration-money was not paid, but a *roqua* given for it, payable when the mutation of names took place. (P. C.) 2 P. C. R. 790 (19 W. R. 149).

See Auction-Purchaser (Execution-Sale) 2.
Benamee 4, 13.
Endowment 10.
Hindoo Widow 14.
Husband and Wife 10.
Joinder of Causes of Action 4.
Limitation (Act XV of 1877) 9, 15.
Mortgage 31, 86, 107.
Pre-emption 1, 15.
Puttee 7.
Registration 22.
Sale 6.
,, (in Execution of Decree) 26, 32, 38, 51, 54.
Sheriff 1, 3, 5, 6, 7.
Trust 5.
Vendor and Purchaser 5, 6, 10.
Will 7, 57.

Purdah Woman.

1. A document obtained by the chief male member of a family from a — should receive a strict construction. (P. C.) 2 P. C. R. 282 (13 W. R. P. C. 3).

PURDAH WOMAN (*continued*).

2. Where a deed of gift purports to have been executed by a —, the Court should see that it was fairly taken from her, and that she was a free agent and duly informed of what she was about; and so when the disposition is in the nature of a death-bed disposition. (P. C.) 2 P. C. R. 339 (14 W. R. P. C. 7; 13 Moo. 419).

3. A suit against a — was held to have failed, as there was no proof that the deed upon which the suit was brought had been signed by her or by any person authorized by her. (P. C.) 2 P. C. R. 572 (17 W. R. 393; 10 B. L. R. 205).

4. Effect of registration in such cases. (P. C.) 2 P. C. R. 585 (17 W. R. 523).

5. When a transaction of such a kind is impeached, there ought to be clear evidence, not of the mere signature of the party, but that the — had the means of knowing what she was about. (P. C.) *Ib.*

And that the transaction was a real and *bonâ fide* one. (P. C.) 2 P. C. R. 964 (21 W. R. 340; 13 B. L. R. 427; L. R. 1 I. A. 192).

6. Although, if a person of competent capacity signs a deed, the presumption is that he understood the instrument to which he has affixed his name; yet in the case of a —, who had no legal assistance, the ordinary presumption does not arise, and it is incumbent upon the Court to be satisfied, as a matter of fact, that she really did understand the instrument to which she has put her name. (P. C.) 3 P. C. R. 444 (I. L. R. 3 Cal. 324).

7. A — summoned as a witness in a criminal case has a right to be exempted from personal attendance at Court and to be examined on commission. I. L. R. 4 Cal. 20.

8. The Court will not order the costs of a commission to examine a defendant who is a — to be paid by her, or order the estimated cost of the commission to be paid into Court, although the application for the commission is made by the lady herself. (O. J.) I. L. R. 5 Cal. 866.

9. In the case of deeds and powers executed by *purdah nusheen* ladies, it is requisite that those who rely on them should satisfy the Court that they had been explained to and understood by those who executed them. (P. C.) L. R. 8 I. A. 39.

10. In a case to recover moneys lent against a — upon an account settled by her husband under a *mookhtarnamah*, which, besides conferring ordinary powers, authorized "all acts done by the said mookhtar, such as giving and taking loans to and from others": *Held* that, in the absence of evidence that the moneys had been borrowed by the husband on behalf of the wife, or that he was her agent carrying on business by her authority, the suit must be dismissed. According to the construction of the *mookhtarnamah*, the husband had no authority to bind the wife by a mere statement of account. (P. C.) *Ib.*

See Endowment 25, 26.
Guardian and Minor 2.

Putnee.

1. Where a — sale was set aside after long litigation, a suit brought to recover the arrears of rent for which the — had been sold was held not barred by Act X of 1859 s. 32. (P. C.) 2 P. C. R. 173 (11 W. R. P. C. 5: 12 Moo. 244; 2 B. L. R. P. C. 10). *See* I. L. R. 3 Cal. 6.

2. The inadvertent omission by a zemindar of one of the formalities prescribed by Reg. VIII of 1819 does not render all the proceedings taken by him inoperative, or constitute his act of selling the tenure into an act of trespass. (P. C.) *Ib.*

3. Reg. VIII of 1819 considered with reference to the relative rights of zemindars and — talookdars. Where a share of a — talook is transferred by a registered putneedar, without the express consent of the zemindar, and in disregard of the Regulation, the transfer is not binding on the zemindar. (P. C.) 2 P. C. R. 269 (12 W. R. P. C. 43; 3 B. L. R. P. C. 48; 13 Moo. 160).

4. Where the assignees of a dur — talook, although the transfer was not registered in the putneedar's books, deposited in the Collector's Court the amount due to the zemindar as an arrear of rent, to stay the sale of the — and protect their own interest, they were held entitled to recover the amount from the putneedar. (P. C.) 2 P. C. R. 903 (20 W. R. 380; 13 B. L. R. 146).

5. According to the effect of Act X of 1859 s. 105 and Reg. VIII of 1819 ss. 8 and 11, and probably also Reg. I of 1820, the sale of a — for arrears of rent destroys all incumbrances created by the putneedar, *e.g.* a dur —. (P. C.) 2 P. C. R. 961 (21 W. R. 324; 13 B. L. R. 408; L. R. 1 I. A. 178).

6. The statutory sale of an under-tenure under Reg. VIII of 1819 cannot be set aside because one of the witnesses to the notice turned out not substantial. Meaning of "substantial" in s. 8. (P. C.) 3 P. C. R. 72 (23 W. R. 113; 14 B. L. R. 394; L. R. 2 I. A. 71).

7. In a suit under Reg. VIII of 1819 s. 14 to set aside the sale of a — tenure, it would be no "sufficient plea," or substantial cause of complaint, that the receipt of the notice referred to in s. 8 had been obtained, or that the notification had been published on, instead of previously to, the 15th of Bysack. 24 W. R. 453 (1 L. R. 1 Cal. 175).

Or that the notice, after having been placed for a time on the cutcherry of the farmer of the talooks in the Mofussil, was then removed and served personally on the defaulter who lived in a distant mehal. 25 W. R. 141 (I. L. R. 1 Cal. 359).

8. Where a putneedar, while out of possession of the — estate, granted a dur — thereof: *Held* that the durputneedar's suit against third persons, who were in possession of the estate, to recover possession would lie, it appearing that the plaintiff had paid an adequate consideration for the dur —, and that the dur — pottah was not evidence of a contract to be performed in future on the happening of a certain contingency, or that if it were so, the plaintiff had done all he was bound to do to entitle him to specific performance of the agreement by the putneedar. I. L. R. 1 Cal. 297.

9. There is no appeal from an order made by the Civil Court under Reg. VIII of 1819 s. 6. I. L. R. 1 Cal. 383 (25 W. R. 222).

10. A, the zemindar, granted a — lease of certain talooks to B, who assigned it to C and D. On B's death, C and D applied to the Collector for registration of the — talook in their name as assignees of B. A objected to the registration on the ground that the lease enured only for the life of B. A's objection being overruled, he instituted a regular suit to eject C and D, the present defendants, which was decided against A finally by the Privy Council in 1874. During the pendency of this litigation the zemindar sued to recover the rent for the year 1868, not upon the basis of the — lease, but for use and occupation, treating the tenants as mere trespassers. This suit was dismissed on the ground that plaintiff should have sued on the lease. In 1875 plaintiff brought the present suit for the rent of 1868 on the — lease. Defendants pleaded *res judicata* and limitation. Plaintiff contended that the suit was within time on the ground that the right to recover the rent was in suspense during the pendency of the litigation regarding the lease: *Held* that the suit, though not *res judicata*, was barred under Act VIII of 1869 (Bengal) s. 29. I. L. R. 3 Cal. 6. *See* I. L. R. 3 Cal. 817.

11. Although Reg. VIII of 1819 s. 8 cl. 2, specifying the manner in which proof should be given of service of notice of sale, is merely directory, it is nevertheless absolutely essential to the validity of a sale under the Regulation that the notice of such sale should be served in strict compliance with the directions given in the above clause. I. L. R. 4 Cal. 41.

12. The defendants, after purchasing a — talook at an auction-sale for arrears of rent under Reg. VIII of 1819, granted a dur — lease to the plaintiffs (the former durputneedars) and received a bonus of Rs. 1,199. The auction-sale being five years afterwards set aside: *Held* that the plaintiffs were entitled to a refund of the bonus, although they had not been dispossessed, but had simply reverted to their former position as durputneedars under the former putneedar. I. L. R. 4 Cal. 778.

13. The holder of a chahar —, or other subordinate tenure, whose tenure has been brought to an end by the sale for arrears of rent of a superior tenure on which his own was dependent, is, upon such sale being set aside, remitted to his previous position, and is entitled to recover possession of the land comprised in his chahar — from the purchaser or any assignee of the purchaser at such sale;

Putnee (*continued*).

and he can do so notwithstanding that he himself took a dur —, including the land he had held as chahar putneedar, from the purchaser at such sale, and that this dur — was afterwards sold in execution of a decree against himself, and purchased at such last-mentioned sale by the person whom he seeks to evict on the strength of his original title. I. L. R. 4 Cal. 807.

14. A plaintiff who has sued for and obtained a decree for an abatement of rent in respect of a — held by him, may afterwards sue for a refund of the rent paid by him before instituting the suit for abatement of rent, in excess of the amount justly payable, notwithstanding that he might, if he had chosen, have included this claim in his suit for abatement of rent. I. L. R. 5 Cal. 24.

15. A putneedar caused to be sold the tenure of his durputneedar, under Act VIII of 1869 (Bengal) s. 59, for the arrears of rent due up to 12th April 1876. This sale took place on 7th November 1876, and after satisfaction of the decree the surplus proceeds remained in the Collectorate to the credit of the durputneedar. Afterwards in December 1876, the putneedar brought another suit for the durputnee rent due in respect of the period between April and October 1876, and having obtained a decree, attached the surplus proceeds in the Collectorate, which were at the same time attached by two other holders of ordinary decrees: *Held* that the decree of the putneedar, although for rents of the current year, had no priority over the other decrees; and that the surplus proceeds of the sale of the durputnee tenure formed part of the assets of the late durputneedar, and were not hypothecated to the putneedar for the rent of the year current. I. L. R. 5 Cal. 494.

See Co-Sharers 9.
Deed of Sale 7.
Estoppel 13.
Indigo 2.
Jurisdiction 39.
Mortgage 92.
Partition 9.
Possession 5.
Res Judicata 30.
Small Cause Court 23.
Voluntary Payment 2.

Puttee.

1. A shareholder in one — of a *putteedaree* estate is not a "stranger" with reference to a shareholder in another — of the estate within the meaning of that term in Act XXIII of 1861 s. 14. I. L. R. 1 All. 272.

2. The auction-purchaser at a sale in execution of a decree of a share in a *putteedaree* estate, seeking to establish his right as against a person whose claim to the right of pre-emption under Act XXIII of 1861 s. 14 has been allowed, and in whose favor the sale has been confirmed, cannot maintain a suit for possession of the share, but should sue for a declaration that the person claiming the right of pre-emption has no such right, and to set aside the sale. *Ib.*

3. The provisions of Act XXIII of 1861 s. 14 are not applicable where the land is sold in execution of a decree of a Revenue Court. I. L. R. 1 All. 277.

4. Held, on the assumption that, where land is sold in execution of such a decree, a claim to the right of pre-emption can be preferred under Act XVIII of 1873 s. 177 and Act XIX of 1873 s. 188, that such claim can only be preferred where the land is a — of a mehal, not where it is part only of a — of a mehal. *Ib.*

5. *Semble* that, where land which is a — of a mehal is sold in execution of such a decree, a claim to the right of pre-emption can be preferred under the provisions of the above sections. *Ib.*

6. Where a share in a certain — was sold by the holder of the share to a stranger, and third persons, holding equal shares in the —, were equally entitled under the village administration-paper to the right of pre-emption of the share: *Held* that such persons were each entitled to have the sale made to him to the extent of one-third of the share. I. L. R. 1 All. 291.

7. The decree of the High Court specified a time within which each party to the suit should pay into Court a proportion of the purchase-money, and declared that, if either failed to pay such proportion within time, the other of them making the further deposit within time should be entitled to the share of the defaulter. *Ib.*

See Bond 5.
Jurisdiction 26.

Pyne.

See Limitation (Act IX of 1871) 5.

Quit Rent.

See Landlord and Tenant 8.
Sunnud 2.

Railway.

1. The latter portion of Act XXV of 1871 s. 2, amending Act XVIII of 1854 s. 1, which provides for payments to be made by persons failing to produce their tickets when demanded by the servants of the Company, applies only to the case of a person who has received a ticket and will not or cannot produce it, and not to a person travelling without having obtained a ticket with no intention to defraud. (O. J.) I. L. R. 1 Bom. 52.

2. A person who sends an article of a dangerous and explosive nature to a — Company to be carried by such Company, without notifying to the servants of the Company the dangerous nature of the article, is liable for the consequences of an explosion, whether it occurs in a manner which he could not have foreseen as probable or not. Such a person is also liable for the consequences of an explosion occurring in a manner which he could not have foreseen, if he omits to take reasonable precaution to preclude the risk of explosion. (F. B.) I. L. R. 1 All. 60.

3. Defendants having made arrangements with the Madras — Company for the through-carriage of goods, received from the plaintiff's agent at Poona thirty bags of *jowari*, to be conveyed thence to Bellary and delivered to the plaintiff's agent there. The "goods consignment note," which was signed by the plaintiff's agent at Poona, contained the following condition, of which he had due notice: "The Company receive goods for conveyance to stations on other railways with which they have made arrangements to book through, *subject to the rules and regulations and rates and fares of the respective Companies over whose lines the goods may pass.*" The Company had issued a public notice of the above rule in the following terms: "The Madras — Company hereby give public notice that they will not be responsible for loss of, or damage to grain after it has been unloaded from the Company's waggons." On reaching Raichore the bags of grain were transferred from the defendants' waggon, in which they had left Poona, into a waggon of the Madras — Company. One bag was subsequently lost; but the remaining twenty-nine arrived, and were unloaded in good condition at Bellary on the 19th September 1877. No steps were taken, either by the defendants or by the Madras — Company, to give information of the arrival of the bags to the consignee, and he never received them. The plaintiff sued to recover their value. The defendants sought to incorporate the above public notice into their contract with the plaintiff by virtue of the condition printed in their "goods consignment note": *Held* that the said public notice afforded no protection to the defendants, on the ground that it was invalid as a regulation for non-compliance with the provisions of Act XVIII of 1854 s. 43, inasmuch as it had not been sanctioned by the local government, and had not been posted up at all the stations of the Madras line of —; and that it could not otherwise be binding against the plaintiff, as neither the plaintiff nor his agents were shown to have had any knowledge of it at the time of entering into the contract with the defendants. *Quære* as to effect of notice if plaintiff or his agents had such knowledge. (O. J.) I. L. R. 3 Bom. 95.

4. *Held* also that the arrival of the grain at the station of destination (Bellary) having been proved, the burden of

RAILWAY (*continued*).

showing that the goods were ready for delivery to the plaintiff for a reasonable time after such arrival, lay on the defendants, although no proof had been given of any application for delivery by the plaintiff within a reasonable time. (O. J.) *Ib.*

5. It is the duty of a — Company to keep goods, which have reached the station of their destination, ready there for delivery until the consignee, in the exercise of due diligence, can call for and remove them; and it is the duty of the consignee to call for and remove them within a reasonable time. (O. J.) *Ib.*

6. *Semble.* The object of Act XVIII of 1854 s. 11 is to preclude — Companies from being able by any stipulation to escape from liability for loss or injury to goods caused by the gross negligence or misconduct of their agents or servants. (O. J.) *Ib.*

The above construction of the section leaves untouched the question whether — Companies, as common carriers, shall be answerable, in cases of loss or damage to goods in the absence of any special contract to the contrary, where such loss or damage is not occasioned by the negligence or misconduct of the Companies, their servants, or agents. (O. J.) 3 Bom. 109.

7. The English Common Law rule, under which common carriers are held liable as insurers of goods against all risks except the act of God or the King's enemies, is not now in force. In cases not met by Act XVIII of 1854 and Act III of 1865, the liability of carriers for loss or damage to goods entrusted to them is prescribed by Act IX of 1872 ss. 151 and 152. Where, therefore, a train was plundered by robbers during the journey, and the plaintiff's goods that were being carried therein were stolen, the defendants were held entitled to the benefit of s. 151. (O. J.) I. L. R. 3 Bom. 109.

8. Plaintiff caused to be delivered to the defendants, for carriage from Bombay to Oojein, certain goods, among which were twelve bags of sugar-candy. His agent, when signing the consignment note at the — station, erroneously, but with fraudulent intent, stated the contents of the twelve bags to be alum, for which a lower freight was charged by the defendants. The — clerk received the goods, and gave a receipt-note, on which the following condition was printed: "The Company give notice that they are not responsible for loss or damage arising from fire, the act of God, or civil commotion." In the course of the journey a fire broke out in the train, and a large portion of the plaintiff's goods, including ten bags of the sugar-candy, was destroyed. In an action for damages for non-delivery: *Held* (1) that, under Act III of 1865 s. 9, the burden of proving negligence on the part of the defendants did not rest upon the plaintiff, notwithstanding the condition in the receipt note; and (2) that the mis-description by plaintiff's agent of the twelve bags of sugar-candy as alum did not exonerate defendants from all liability to plaintiff in respect of these bags, but that plaintiff was only entitled to recover, in respect of the ten lost bags, the value of alum only, and not sugar-candy, while defendants, on the other hand, could not, in respect of the said ten bags, charge freight as for sugar-candy. (O. J.) I. L. R. 3 Bom. 120.

See Bill of Exchange 4.
Jurisdiction 25.

Raj.

1. Upon a consideration of the circumstances of this case, the zemindaree of Tirhoot was held to be a —, and the usage to prevail there whereby the reigning Rajah has the power of abdicating, and by a deed assigning the — in favor of his eldest son or next immediate male heir. (P. C.) 2 P. C. R. 20 (6 Moo. 164).

2. The Hunsapore (Hosaipore) zemindaree was held to be a —, and descendible as such. (P. C.) 2 P. C. R. 114 (9 W. R. P. C. 15; 12 Moo. 1). *See* 3 P. C. R. 725 (L. R. 7 I. A. 38).

3. Reg. XI of 1793 does not affect the descent of large zemindarees held as — or subject to family custom. *Ib.* *See also* 2 P. C. R. 744 (19 W. R. 8; I. L. R. 1 Cal. 186; and recent P. C. decision (not yet reported) in *Muttu Vaduganadha Tevar* v. *Dorasinga Tevar*, 14th May 1881.

4. Succession to the Tipperah —. Consideration of the family custom governing the succession to the —. (P. C.) 2 P. C. R. 243 (12 W. R. P. C. 21; 12 Moo. 523; 3 B. L. R. P. C. 13).

5. Held that it was not proved that the *sevas* in dispute were appurtenant to the Chhedra —. Even if the question had been one of succession to the —, treating the Puchis Sowal as a rule of inheritance applicable to the — and not to the family, and assuming that, according to that compilation, an illegitimate son may succeed to the — in the absence of other relatives: *Held* that it was not proved in this case that there was that absence of other relatives which would entitle an illegitimate son to succeed. (P. C.) 3 P. C. R. 802.

See Custom 6.
Hindoo Law (Inheritance and Succession) 3, 6.
Nattore.
Pachete.
Ramnugger.
Zemindaree 3.

Rameswarem Pagoda.

See Endowment 13.

Ramnad.

1. Adoption of a successor to the zemindaree of —. (P. C.) 2 P. C. R. 135 (10 W. R. P. C. 17; 12 Moo. 397; 1 B. L. R. P. C. 1). *See also* 3 P. C. R. 263 (25 W. R. 291; L. R. 3 I. A. 155; I. L. R. 1 Mad. 69).

See Endowment 13.

Ramnugger.

1. Title to the Raj and zemindaree of —. (P. C.) 2 P. C. R. 225 (12 W. R. P. C. 6; 12 Moo. 300; 2 B. L. R. P. C. 111). *See* 3 P. C. R. 27 (22 W. R. 165); 3 P. C. R. 773 (I. L. R. 6 Cal. 213).

See Mesne Profits 7.

Rates.

See Municipal 1.

Ratification.

See Guarantee 1.
Hindoo Law (Adoption) 20.
Joint Stock Company 2.
Timber 2.

Razinama.

See Evidence (Documentary) 10.
Meerasee 2, 3, 4.
Mortgage 102.

Rebel.

See Government 2.
Limitation 8.
Sale 1.

Receipt.

1. Receipt note. *See* Railway 8.

See Bailment 4.
Contempt of Lawful Authority of Public Servant 1.

Receipt (*continued*).

See **Co-Sharers 7.**
Execution of Decree 43, 45.
Hindoo Law (Coparcenary) 20.
Hoondee 3.
Limitation (Act IX of 1871) 20.
Partnership 15.
Registration 15, 24, 30, 42.
Stamp Duty 13.

Receiver.

1. By a decree of the High Court obtained by D M in November 1871, in a suit on a mortgage brought by him against B C and P C, it was ordered that the suit should be dismissed against P C; that the amount found due on the mortgage should be paid to D M by B C; that the mortgaged property, some of which was in Calcutta and some in the Mofussil, should be sold in default of payment, and any deficiency should be made good by B C. The property in Calcutta was sold under the decree and did not realize sufficient to satisfy the decree. D M thereupon, in August 1873, obtained an order for the transfer of the decree to the Mofussil Court for execution; after the transfer B C died in December 1874, leaving a widow and an adopted son his representatives, against whom the suit was revived. The decree, however, was returned to the High Court unexecuted. In a suit for partition of the estate of R C deceased, brought by P C against B C in the High Court, a decree was made in February 1871 for an injunction to restrain B C from intermeddling with the estate or the accumulations, and for the appointment of the — of the Court as —, to whom all parties were to give up quiet possession. B C was in that suit entitled to a moiety of the property in suit: *Held*, on application by D M to the Court for an order that the — should sell the right, title, and interest of the widow and son of B C in his hands to satisfy the balance of his debt, that D M was entitled to an order that their interest should be attached in the hands of the —, and that the — should proceed to sell the same. (O. J.) I. L. R. 1 Cal. 403.

2. Property in the hands of the — of the High Court cannot be proceeded against by attachment in the Mofussil. (O. J.) *Ib.*

See Guardian and Minor 13.
Limitation (Act IX of 1871) 32.
Small Cause Court 15.

Reclaimed Land.

1. Held that the expression "to reclaim land from the sea," signifying, in its primary and ordinary sense, the conversion of the reclaimed land into dry land, by rendering it secure from the ingress of the sea, with a view to its being used as such, the construction of a dock was not such a reclamation as was contemplated in the lease in this case, and therefore the enhanced rent could not be charged for the water area of the dock. (O. J.) I. L. R. 1 Bom. 513.

See Enam 3.
Limitation 39.

Recognizance.

1. The High Court has no power to reduce the amount of — which has been forfeited; but in a case of hardship the matter should be referred to Government. (Cr.) I. L. R. 3 Cal. 757.

2. A Magistrate is not justified in forfeiting a — under Act X of 1872 s. 502 unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses, upon whose evidence the rule to show cause why the — should not be forfeited has been issued. (Cr.) I. L. R. 4 Cal. 865.

See **Security 1, 2, 3, 4.**

Record-of-Rights.

See **Jurisdiction 38.**
Trust 10.
Wajib-ul-urz.

Re-entry.

See Criminal Trespass 8.
Mortgage 11.

Re-formation.

See Churs 2, 6, 15.
Contract 6.
Sunnud 1, 2, 5.

Refund.

See Cheque 1.
Deposit 1.
Execution of Decree 29, 39, 42, 43.
High Court 5.
Limitation (Act IX of 1871) 46.
Mortgage 92, 94.
Principal and Surety 9, 10.
Putnee 12, 14.
Sale (in Execution of Decree) 38, 51, 54.
Sheriff 1, 6, 7.
Small Cause Court 29.
Voluntary Payment 1.

Registered Talookdar.

See Oudh Estates 1, 2, 3, 9, 10, 13.
,, Sub-Settlement 1, 5.
,, Talookdars Relief.

Registration.

1. An instrument acknowledging payment of the consideration-money for what was to be ultimately an absolute sale, requires — under Act XX of 1866 s. 2, and cannot be received in evidence under s. 49 if not registered. (P. C.) 2 P. C. R. 467 (16 W. R. P. C. 26; 14 Moo. 129; 9 B. L. R. 433). *See also* 22 W. R. 309; (P. C.) 3 P. C. R. 300 (26 W. R. 50; I. L. R. 2 Cal. 131; L. R. 3 I. A. 221).

The above ruling relates to preliminary written agreements of the nature provided for in Act VIII of 1871 s. 17 cls. 2 and 3, and not to oral contracts. (F. B.) I. L. R. 4 Bom. 126.

2. Where a person alleged to have executed a deed denies execution of it before the registering officer, the Zillah Judge, having regard to Act XX of 1866 s. 84 and the form of petition given in the Schedule, has jurisdiction to determine such a question. (P. C.) *Ib.*

3. The mere circumstance of a bond not being registered is not sufficient *per se* to counterbalance the evidence, if it is generally satisfactory, in proof of the validity of the bond. (P. C.) 2 P. C. R. 471 (16 W. R. P. C. 30; 9 B. L. R. 426).

4. Where certain letters were held not to require —, as not amounting to a lease or an agreement for a lease, but as being evidence of a contract not defined in the — Act. (P. C.) 2 P C. R. 952 (21 W. R. 315; L. R. 1 I. A. 124).

5. The High Court N. W. P., having no ordinary Civil jurisdiction, is not competent, under Act XX of 1866 s. 83, to direct the — of a deed, the — of which has been refused by the Registrar and the Registrar-General. (P. C.) 3 P. C. R. 170 (24 W. R. 75; 15 B. L. R. 228; L. R. 2 I. A. 210).

6. Where a deed of sale is presented for — within the period required by s. 22, and is accepted by the registering officer who, without the vendors appearing, registers it by a mistake, and the — is declared by a competent Court to be invalid, the registering officer may, although the period of four months has expired, proceed to compel the appearance of the vendors, and on their admission, register the deed. (P. C.) *Ib*

REGISTRATION (*continued*).

7. Such — may be effected by the registering officer voluntarily, and without an order from the District Court under s. 84, notwithstanding that an application by the parties concerned to have it registered, has been refused by the Registrar, and that the Registrar-General has deemed the first (invalid) — to be due. (P. C.) *Ib.*

8. *Semble.* Every — of a deed is not null and void by reason of a non-compliance with ss. 19, 21, 36, or the like; such errors or defects should be classed under the general words "defect in procedure" in s. 88. (P. C.) *Ib. See also* 12 *post.*

9. The District Courts mentioned in Act VIII of 1871 must be taken to be the ordinary Zillah Courts over which the High Court has power of superintendence. (P. C.) 3 P. C. R. 300 (26 W. R. 50; I. L. R. 2 Cal. 131; L. R. 3 I. A. 221).

10. Where a deed is tendered for — within the time prescribed by Act VIII of 1871, and registered, it is immaterial that another deed has obtained priority of —. (P. C.) 3 P. C. R. 438 (L. R. 4 I. A. 166; I. L. R. 1 All. 465).

11. The latter part of s. 35 of the same Act, taken in connection with the rest of the Act, should be read distributively and be construed to mean that the registering officer shall refuse to register a deed, *quoad* the persons who deny the execution of it, and *quoad* any person who appears to be a minor, an idiot, or a lunatic. (P. C.) *Ib.*

12. The Privy Council declined to lay down broadly, as a general rule, that, in all cases where a registered deed is produced, it is open to the party objecting to the deed to contend that there was an improper —, or that the terms of the — Act in some substantial respects have not been complied with. (P. C.) *Ib. See also* 8 *ante.*

13. The pottahs or mochulkas, as defined in Act VIII of 1865 (Madras) s. 3, which are excluded from the operation of Act XX of 1866 by ss. 2 and 17, refer only to leases executed by tenants who are cultivating the land and their immediate landlords, and not to leases granted by zemindars to intermediate holders. (P. C.) 3 P. C. R. 646 (L. R. 6 I. A. 170; I. L. R. 2 Mad. 67).

14. Act XX of 1866 s. 17 extends to a deed of partition; and this is not prevented by such an instrument being enumerated in s. 18 amongst those which are optionally registrable. I. L. R. 1 Bom. 67.

15. J T passed a writing to V under date 28th April 1874 stipulating that the deed of sale of J T's bungalow to V for Rs. 4,300, which was to have been made that day, owing to certain circumstances therein mentioned, should be made and delivered by J T to V 20 days thereafter. The writing further acknowledged the receipt by J T from V of Rs. 100 as earnest money for the purchase of the bungalow, and concluded with certain penalties in the event of a default by either party. In a suit in the nature of a suit for specific performance brought by V to compel J T to execute the deed of sale to V and to register the same as promised in the writing of 28th April 1874: *Held* that the writing required — under Act VIII of 1871 s. 17 cls. 2 and 3, as it distinctly acknowledged the receipt of Rs. 100 as part of the consideration for sale of the house to the plaintiff for the sum of Rs. 4,300 and operated to create an interest in the house of the value of Rs. 100 and upwards. I. L. R. 1 Bom. 190.

There is nothing in the above decision to interfere with the proposition, having regard to Act III of 1877 s. 17 cl. (*h*), that in a suit for specific performance of an agreement for the sale of land, the agreement may be admitted in evidence if it does not itself create, declare, etc., any right, title, or interest of the value of Rs. 100 and upwards to or in immoveable property by the acknowledgment of receipt or payment of consideration on account of the creation, etc., of a right, title, or interest in the land. I. L. R. 2 Bom. 273. *See also* I. L. R. 4 Bom. 590.

The payment of earnest-money must be regarded as part payment of the consideration. (F. B.) I. L. R. 4 Bom. 126.

16. A document purporting to have been passed by a mortgagee to his mortgagor and reciting the demand of the former for the repayment of his mortgage money before the due date of the mortgage, and the compliance with that demand by the latter by means of a fresh loan upon a second mortgage of the same property; and reciting also the fact of the delivery of possession of the property by the original to the second mortgagee; and purporting, in conclusion, to contain a declaration by the original mortgagee that nothing remained due to him in respect of his mortgage, is a document which under Act XX of 1866 s. 17 cls. 2 and 3, as well as under Act VIII of 1871 s. 17 cls. 2 and 3, requires —, and, if unregistered, is, by s. 49 of the same two Acts, inadmissible, as evidence of any transaction affecting any property comprised therein. The fact of the extinction of the original mortgagee's lien may, however, be proved by other documentary or proper oral evidence. I. L. R. 1 Bom. 197.

17. Where a mortgagee obtained a decree against his mortgagors for the payment of the mortgage moneys, and in default for the sale of the mortgaged property, and his heir afterwards executed an assignment of the decree for valuable consideration to the plaintiff who proceeded to execute the decree by sale of the mortgaged property: *Held* that the assignment was a document of which the — was compulsory under Act VIII of 1871 s. 17. I. L. R 1 Bom. 267.

18. A mortgage deed registered under Act XX of 1866 is not thereby entitled to priority over a mortgage deed which might have been, but was not, registered under Act XIX of 1843, in cases where the consideration for the rival deeds exceeds Rs. 100. *Quære* whether, in the case of an instrument executed for a consideration less than Rs. 100, Act XX of 1866 s. 50 would operate to give priority to the deed registered under that Act over the deed which might have been, but was not, registered under Act XIX of 1843. I. L. R. 1 Bom. 574. *See* I. L. R. 2 Mad. 108. *See also post* 54.

19. The words "present or future," "vested or contingent," in Act VIII of 1871 s. 17, point not to the value or its ascertainment, but to the right or interest in the land which is to be created as a security. If the charge or interest so created is of a value less than Rs. 100, — is needless. I. L. R. 1 Mad. 378. *See also* I. L. R. 2 All. 96, 216, and *post* 27, 32. *But see* 21 *post.*

20. Transfer of registry by Revenue Authority. *See* Mutation of Names.

21. A bond which charged immoveable property with the payment on a day specified therein of Rs. 99 the principal amount, and Rs. 6 interest thereon, should have been registered under Act VIII of 1871 s. 17 cl. 2. I. L. R. 1 All. 274; 2 *Ib.* 40, 688. *But see* 19 *ante* and *post* 27, 32.

22. A deed of sale executed by the vendor alone, which recited that the vendor had received the purchase-money, and that the purchaser had been put into possession, was presented for — by the vendor, the purchaser not being present. The Registrar refused to register the document on the ground that the deed had not been delivered, and no consideration had passed, the vendor having stated that he had not received the purchase-money. In refusing to register, the Registrar believed that the deed was of the vendor's own creation. The vendor applied by petition to the High Court to establish his right to have the document registered. The alleged purchaser repudiated the sale: *Held* that as it appeared on the face of the document itself that the petitioner was not a person "claiming" under it, the petition could not be entertained under Act VIII of 1871 s. 73. (F. B.) I. L. R. 1 All. 318.

23. No appeal lies from orders passed in execution of decrees under Act XX of 1866, the procedure under that Act having been expressly saved by Act VIII of 1871 which repealed Act XX of 1866. I. L. R. 1 All. 377. (*Overruled by* 28 *post.*) *See also* I. L. R. 3 Cal. 517.

24. A receipt for sums paid in part liquidation of a bond hypothecating immoveable property must be triable under Act VIII of 1871 s. 17 to render it admissible as evidence under s. 49 of the said Act. Under Act I of 1872 s. 91 Ill. (*e*), such payments may nevertheless be proved by parol evidence, which is not excluded owing to the inadmissibility of the documentary evidence. I. L. R. 1 All. 442.

Held otherwise under Act III of 1877 s. 17, under which receipts passed by a mortgagee for sums paid on account of the mortgage debts, and exceeding Rs. 100 each, are not inadmissible in evidence for want of —; money paid on a mortgage debt is not the consideration for the limitation or extinction of so much of the interest in the land created by the mortgage, and a receipt for such a payment need not therefore be registered under Act III of 1877 s. 17 cl. (*b*) I. L. R. 4 Bom. 235.

REGISTRATION (*continued*).

25. A deed of assignment, for a consideration of less than Rs. 100, of a mortgage for consideration of Rs. 100 or upward, does not need —. I. L. R. 2 Bom. 97.

26. A *dowl fehrist* being merely a memorandum by a zemindar's agent of the rates of rent agreed upon, to which the tenants affix their signatures in token of such agreement, is not a contract, and does not require to be stamped or registered. I. L. R. 3 Cal. 322.

So also an entry in the zemindar's book, showing extent of holding and rate of rent, although signed by the tenant, was held to amount, not to a lease or agreement for a lease, but to an admission only, and could therefore be used as evidence against the tenant, although neither stamped nor registered. I. L. R. 5 Cal. 864.

27. The words "or in future" in Act XX of 1866 s. 17 and Act VIII of 1871 s. 17 have reference to estates in remainder or in reversion in immoveable property, or to estates otherwise deferred in enjoyment, and not to interest payable in future on principal moneys lent on the security of immoveable property. I. L. R. 2 Bom. 353. *See also* 19 *ante* and *post* 32. *But see* 21 *ante*.

28. An appeal lies from an order passed in the execution of a decree obtained under Act XX of 1866 s. 53 upon a bond specially registered* under s. 52. (F. B.) I. L. R. 1 All. 583. *But see* I. L. R. 3 Cal. 517.

29. The Court is bound in regular appeal to entertain an objection that a document is invalid for want of —, even though no objection may have been raised to its admissibility in the Court below. I. L. R. 2 Bom. 489. *See* I. L. R. 2 All. 554.

30. A document, called a receipt, but intended to be used to prove the release of a claim secured by mortgage, was held to require — under Act VIII of 1871 s. 49, inasmuch as it affected immoveable property. *Ib.* *But see* I. L. R. 4 Bom. 235.

31. An order refusing — of a deed was passed on the 23rd August 1872; and when Act VIII of 1871 was in force, an application for review was presented, and finally rejected on 20th December 1877 after the repeal of Act VIII of 1871 by Act III of 1877: *Held* that, under Act I of 1868 s. 6, the proceedings must be governed by the Act in force at the time when they were instituted, *viz.* Act VIII of 1871, and therefore no appeal would lie. I. L. R. 3 Cal. 727. *See also* I. L. R. 4 Cal. 536.

32. A deed purporting to secure the sum of Rs. 95 advanced on certain properties, giving the lender possession for a fixed period at a yearly rent of Rs. 8-12, Rs. 6-12 out of such rent being retainable by the lessee as interest on the sum advanced, does not require —. I. L. R. 4 Cal. 61. *See* 19, 21, and 27 *ante*.

33. A sued in the Small Cause Court on the covenant of a mortgage-deed for a money-decree. The deed being unregistered, was held inadmissible in evidence: *Held*, on reference to the High Court, that the unregistered mortgage-deed, being in its terms indivisible and disclosing one transaction only which it would be imperative on the plaintiff to prove for the purpose of making out his case, was, under Act VIII of 1871 s. 49, inadmissible in evidence to prove a fact for which — was unnecessary. (O. J.) I. L. R. 4 Cal. 83.

34. Where a person had agreed to sell another certain immoveable property, and had conveyed the same to him by a deed of sale which under Act III of 1877 required —, and the vendor refused to register such deed: *Held* that it was incumbent on the vendee to take steps under that Act to compel the vendor to register before he sought relief in the Civil Court, but that he was at liberty, without doing so, to sue the vendor in the Civil Court for the — of such deed. I. L. R. 2 All. 46.

35. A lease, for one year certain, containing an expression, on the tenant's part, of readiness to hold the land longer at the same rent if the landlord should desire it, is a lease for a term not exceeding one year, the — of which is optional under Act VIII of 1871 s. 18. I. L. R. 3 Bom. 21.

36. The expression "an undertaking to cultivate or occupy" used in Act VIII of 1871 s. 3 in defining the word "lease" means an *accepted* undertaking giving to the lessee a right or interest in the thing let. *Ib.*

37. A registered deed of sale, the — of which was compulsory, does not take effect against a prior unregistered deed of sale of the same property, the — of which was optional. I. L. R. 4 Cal. 536.

38. A document creating an interest in immoveable property the — of which under Act VIII of 1771 was compulsory, and which was registered under that Act, does not, under s. 50 of that Act, take effect as regards such property against an unregistered document relating to such land, the — of which under Act VIII of 1871 was optional. I. L. R. 2 All. 198. *See* 49 *post*.

39. Act III of 1877 s. 50 does not apply to documents executed after 1st July 1871 and before Act III of 1877 came into operation. *Ib.*

40. An equitable mortgage by deposit of title deeds was created on 15th August 1862. In March 1873 the mortgagee P D executed an assignment of all his property and of all debts due to him, and all the securities therefor, to the plaintiff. The assignment also contained a power of attorney from the mortgagee to the plaintiff, but was not registered: *Held* that as the deed gave that power the full effect of an assignment, such an assignment, whether legal or equitable, should be registered under Act VIII of 1871 ss. 17 and 49. The Court, however, being of opinion that there had not been any deliberate intention, on the part of the parties of the deed, to evade the law of —, granted the plaintiff an adjournment of the case, in order to complete his title as an equitable mortgagee by obtaining, registering, and putting in evidence a fresh assignment to himself from P. D. (O. J. Ap.) I. L. R. 3 Bom. 312.

41. Where the Subordinate Judge of Dehra Doon made and signed the following endorsement on a deed of mortgage of immoveable property, "This deed was purchased on 1st December 1875, at a public sale in the Court of Dehra Doon, by N and K, plaintiffs, for Rs. 2,400, under special orders passed by the Court on 23rd November 1875, in the case of N and K, plaintiffs, against R for self and as guardian of the heir in possession of the estate left by M": *Held* that this instrument required to be registered. I. L. R. 2 All. 392.

42. *Held* that a receipt for Rs. 1,000 earnest-money fell within Act VIII of 1871 s. 17 cl. 3 and was therefore inadmissible in evidence, not having been registered; but that, under Act I of 1872 s. 91, oral evidence was admissible to prove the payment, notwithstanding the existence of the written receipt. (F. B.) I. L. R. 4 Bom. 126.

43. Persons claiming under a registered document which has been given, accepted, and registered in fraud of a third party, and in collusion with the grantor, are not entitled to the benefit of Act VIII of 1871 s. 48, and therefore the — of a document of title which has been procured in fraud of a party possessing a prior equitable title and with actual notice of his prior equitable title, does not deprive such party of his priority. (F. B.) I. L. R. 4 Bom. 126.

44. — cannot confer validity upon an instrument which is *ultra vires*, illegal, or fraudulent —. (F. B.) *Ib.*

45. The reason for the exception, made by Act VIII of 1871 s. 48, in favor of an oral agreement accompanied by possession, is that, by such possession, the parties who rely on a subsequent registered deed, had, or might have had, if they had been reasonably vigilant, previously to their entering into their contract with the vendor and to their taking a conveyance, notice, by the fact of such possession, that there was some prior claim to the property. Therefore where there is actual notice of a prior oral agreement, although unaccompanied by possession, the object of the Legislature is fully attained. (F. B.) *Ib.*

46. A certificate of payment granted under the provisions of Reg. VIII of 1819 s. 15 cl. 1 is admissible in evidence without being registered. I. L. R. 5 Cal. 226.

47. *Quære* whether a sale certificate granted under Act X of 1877 s. 316 (corresponding to Act VIII of 1859 s. 259) is admissible in evidence without being registered. *Ib.*

48. Held that, under Act III of 1877 s. 50, a document of which the — was compulsory under that Act, and which was registered thereunder, took effect, as regards the property comprised in the document, as against another document of a prior date, relating to the same property, executed while Act VIII of 1871 was in force, and which did not require, under that Act, to be registered, and was not registered under it. I. L. R. 2 All. 431.

49. Construction of Act VIII of 1871 s. 50, and of the

REGISTRATION (*continued*).

words relating to possession found in s. 48. I. L. R. 5 Cal. 387. *See* 38 *ante*.

50. Refusal to admit execution of a document is a denial of execution within the meaning of the — Act III of 1877, and so also is a wilful refusal or neglect to attend and admit execution; and where such refusal or neglect occurs, a suit will lie under s. 77 for the purpose of having the document registered. The Registrar is not a necessary party to such a suit. (O. J.) I. L. R. 5 Cal. 445.

51. Certain immoveable property having been attached in the execution of a decree held by S, B and L objected to the attachment. An arrangement was subsequently effected between the objectors and the parties to the decree which resulted in all parties jointly filing a *solehnamah* in Court, in which B and L, who had purchased the rights of the judgment-debtor in the attached property, agreed to pay the amount of the decree, which exceeded Rs. 100, within one year, and hypothecated such property as security for the payment of such amount. S having sued upon this document claiming to recover the amount of the decree by the sale of such property: *Held* that the document required to be registered, and not being registered the suit thereon was not maintainable. I. L. R. 2 All. 481.

52. Cases decided by the High Court in which the *solehnamah* having been relied on, not as containing the hypothecation itself, but as evidence only of a separate parol agreement, or in which a decree having been made in accordance with the terms of the document, was held not to require —, remarked upon and distinguished. *Ib.*

53. When a transaction is indivisible, and the — of the document evidencing it is, by law, compulsory, the document will not be admissible in evidence if not duly registered; but when the transaction is divisible, as when upon a loan of money, it is agreed (1) that the loan shall be secured by a bond containing a covenant for repayment of the sum advanced with interest within a certain time; and also (2) that certain designated property shall be hypothecated as collateral security for the repayment of the loan, the same rule does not apply, and an unregistered bond for the amount advanced, with interest, containing a further provision that, as collateral security for the amount advanced, certain property should remain hypothecated, may be used as evidence of the loan although inadmissible to prove the hypothecation. I. L. R. 5 Cal. 611.

54. Deeds of sale dated, respectively, 22nd October 1868, and 7th February 1874, and registered, the former under Act XX of 1866 and the latter under Act VIII of 1871, are not thereby entitled to priority over an unregistered mortgage-deed, dated 13th June 1864, the — of which was optional under Act XIX of 1843, where the consideration for the rival deeds exceed Rs. 100. I. L. R. 4 Bom. 459.

55. In the case of a document executed while Act VIII of 1871 was in force, the — of which under that Act was optional, and which was not registered thereunder, and of a document executed after Act III of 1877 had come into force, the — of which under that Act was compulsory, and which was registered thereunder, both documents relating to the same property: *Held* that, under Act III of 1877 s. 50, the registered document took effect as regards such property against the unregistered document, the provisions of Act I of 1868 s. 6 notwithstanding. (F. B.) I. L. R. 2 All. 851.

56. Where a Registrar of Assurances has intentionally and deliberately issued a certificate of the — of a document, with knowledge of certain facts relied on, as affecting his power to grant the certificate, the Courts are bound to accept such certificate as due proof of —, and cannot go behind it for the purpose of satisfying themselves that the registering officer has strictly conformed with all the provisions of the Act. I. L. R. 6 Cal. 25.

See **Arbitration 8.**
Bailment 5.
Bank of Bengal 1.
Damages 4.
Evidence (Documentary) 9.
Hereditary Office 8.
Hindoo Law (Adoption) 6.
Hindoo Law (Coparcenary) 8.
Landlord and Tenant 5, 6.
Limitation (Act IX of 1871) 61, 69, 92, 96.
Mortgage 45, 69, 77, 78, 98, 102, 110, 128, 180.
Partition 8.
Partnership 11.
Practice (Review) 5.
Purdah Woman 4.
Registered Talookdar.
Sale (in Execution of Decree) 58, 54.
Stamp Duty 8.
Vendor and Purchaser 4, 5, 7.

Regulation III of 1793.

s. 14. *See* Limitation (Reg. III of 1793 s. 14).

Regulation IV of 1793.

s. 15. *See* Mahomedan Law 1.
Conjugal Rights 1.

Regulation VIII of 1793.

s. 41. *See* Service Tenure 1, 8.
s. 49. *See* Enhancement 4.
s. 51. *See* ,, 4, 7, 9, 12.

Regulation X of 1793.

See Court of Wards 1.

Regulation XI of 1793.

See Raj 8.
Zemindaree 1.

Regulation XV of 1793.

s. 6. *See* Interest 2, 13.
s. 7. *See* Mortgage 15.
s. 8. *See* Usury 1.
s. 9. *See* ,, 1.
s. 10. *See* Mortgage 4.

Regulation XIX of 1793.

s. 10. *See* Lakheraj 3.
See Jurisdiction 53.
Onus Probandi 1.

Regulation XLIV of 1793.

s. 5. *See* Enhancement 24.
Lease 10.

Regulation XLI of 1795.

s. 10. *See* Lakheraj 3.

Regulation IV of 1797.

s. 3. *See* Murder 1.
See Murder 1.

Regulation VII of 1799.

See Sale 8.

Regulation X of 1800.

See Zemindaree.

Reimbursement.

1. Act IX of 1872 s. 69 was intended to include cases not only of personal liability, but all liabilities to payment for which owners of land are indirectly liable, when such liabilities are imposed upon lands held by them. That section must be held to include such a case as a sub-lessee paying rent to a superior landlord for which the intermediate lessee is liable under a covenant. I. L. R. 4 Cal. 369.

Release.

See Contempt of Court 6.
Contract 4, 5.
Khas Mehal 1.
Limitation (Act IX of 1871) 77.
Misrepresentation 1.
Mortgage 110.
Partnership 15.
Principal and Surety 12.
Registration 80.
Stamp Duty 1.
Will 59.

Relief.

1. In a suit for confirmation of possession, the prayer in the plaint that certain deeds be set aside is a prayer for substantial —, and requires something more than a declaration of title. (P. C.) 2 P. C. R. 964 (21 W. R. 340; 13 B. L. R. 427; L. R. 1 I. A. 192).

2. The intervention of defendant in the proceedings of the Settlement Officer, and the former's objection to the entry on the *wajib-ul-urz* (or village administration-paper) of the widow's adopted son as her successor to the mouzah in question on the ground that the adoption was illegal, is an act of obstruction against which — may be granted if it is shown (which was not in this case) that the entry thus objected to was necessary to the settlement of the mouzah, or the completion of the title, or the right to present possession. (P. C.) 3 P. C. R. 529 (L. R. 5 I. A. 87; I. L. R. 1 All. 688).

3. The setting up by the defendant of a fictitious will (oral or written) may be a ground for claiming a cancellation of the document. (P. C.) *Ib.*

4. *Quære* whether, where — against this will was not one of the objects of the original suit by the widow, and the adopted son was afterwards made a co-plaintiff, the suit ought not, for the purpose of such claim, to be considered as a new suit; and whether, the defendant having before that time put forward the claim and persisted in it to the end, — might not, if asked for, have been granted against it. (P. C.) *Ib.*

5. Alternative —. *See* Joinder of Causes of Action 3; Plaint 7.

See Building 1.
Cancellation.
Contract 6.
Court Fees 1.
Declaratory Decree 3, 4, 5, 6, 8, 14, 17.
Endowment 15.
Karanavan 5.
Lakheraj 1.
Limitation (Act IX of 1871) 14.
Mokurruree 1.
Mortgage 42.
Plaint 6, 7.
Practice (Suit) 1.
Re-formation.
Res Judicata 10.
Specific Performance.

Religion.

See Endowment.
Guardian and Minor 6.
Obstruction 4.
Religious or Charitable Trusts.

Religious or Charitable Trusts.

1. The representatives of a testator who has created —, in which the representatives are not personally interested, may institute proceedings to have abuses in the trust rectified, there being no officer in this country who has such power of enforcing the due administration of — by information at the relation of some private individual, as is possessed by the Attorney-General in England. A suit for this purpose should not be admitted, unless the plaintiff gives sufficient security for costs. (O. J. Ap.) I. L. R. 5 Cal. 700.

2. In order that a decree for an account may be made in favor of the plaintiff in such a suit, he must allege substantially in his plaint that which must be a distinct breach of trust; it is not sufficient for him to make out a case of mere suspicion, or to rely on particular passages in the defendant's written statement. (O. J. Ap.) *Ib.*

Relinquishment.

1. Whether a particular claim arising out of the same cause of action is relinquished voluntarily or by mistake, the result would be the same, and a second suit for that claim would be barred under Act VIII of 1859 s. 7. (P C.) 2 P. C. R. 59 (8 W. R. P. C. 3; 11 Moo. 551). *See also* 12 W. R. 79. *See* 2 *post.*

2. A former suit for a share of property purchased in the name of G, in which it was claimed as joint property, does not bar plaintiff, under the same section, from suing for other property bought in the name of M at another time. (P. C.) 2 P. C. R. 906 (20 W. R. 451).

3. S, as one of the heirs of his brother M, sued the sons of M, the other heirs of M, for (amongst other things) a declaration of his right to share in the rights and interests of M as the mortgagee under a deed of mortgage, which he valued at the principal sum advanced under the mortgage, *viz.* Rs. 5,000, stating his cause of action to be the obstruction caused by the sons of M to his sharing in M's estate. He obtained a decree declaring his title to the share claimed. L, one of the sons of M, had fraudulently concealed from and kept S in ignorance of the fact that previously to the suit he had realized Rs. 8,624 under the mortgage. On this fact coming to S's knowledge, he sued the sons of M to recover his share of that sum : *Held* that the second suit was not barred by Act VIII of 1859 s. 7. I. L. R. 1 All. 544.

4. Where a plaintiff originally sued for a certain sum upon his khatta-books, and an objection was taken by the defendant that he ought to have sued upon a hat-chitta, whereupon the plaintiff amended his plaint by suing for the amount admittedly due upon the hat-chitta, in addition to the amount he claimed upon his khatta-books : *Held* that, when the plaintiff amended his plaint by suing upon the hat-chitta, his causes of action, which, when the suit was originally framed, were distinct, became united ; that there was no — in the original suit within the terms of Act VIII of 1859 s. 7 (corresponding with Act X of 1877 s. 43) ; and that the plaint was rightly amended. I. L. R. 3 Cal. 785.

5. Where the heirs of a deceased Hindoo sued to recover possession of certain mouzahs granted in *mokurruree* to the defendants by the widow of the deceased, on the ground that the latter, as a Hindoo widow, had no power to create an interest which would last beyond her own life, and it did not appear that, at the time of filing this suit, the plaintiffs had any knowledge either that part of the lands comprised in the mouzahs had been taken by Government, or that the compensation money had been lodged in the Collectorate ; and the heirs, after obtaining a decree for possession of the mouzahs, brought a fresh suit against the defendants to recover the compensation money wrongfully drawn out by them from the Collectorate : *Held* that the suit was not barred by Act VIII of 1859 s. 7, and that the claim of the heirs was a proper subject for a regular suit, and could not have been heard and determined in execution of the decree in the former suit. I. L. R. 5 Cal. 597.

See Gift 15.
Hindoo Law (Inheritance and Succession) 36.
Mahomedan Law 5.
Meerasee 4.
Razinama.
Splitting Cause of Action.

Remand.

1. Where an Appellate Court, under Act VIII of 1859 s. 354, refers to a Lower Court issues for trial and fixes a time within which, after the return of the finding, either party to the appeal may file a memorandum of objections to the same, neither party is entitled, without the leave of the Court, to take any objection to the finding, orally or otherwise, after the expiry of the period so fixed without his having filed such memorandum. I. L. R. 1 All. 165.

So also under Act X of 1877 s. 566. I. L. R. 2 All. 908.

See Discharge 4.
Guardian and Minor 10.
Hindoo Widow 20.
Issues 5.
Limitation (Act XIV of 1859) 24.
Partnership 18.
Plaint 1, 8.
Practice (Appeal) 28.
Principal and Surety 8.
Privy Council 27, 28, 83, 42.

Remoteness.

See Will 27, 28, 52.

Rent.

1. Excess —. *See* Limitation 4.

2. The Privy Council refused to allow an unexplained note embodied in the order of the Settlement Officer to over-ride the former arrangement of the parties, so as to render the respondent, a natural son of the late Rajah Shumshare Bahadoor, liable to pay the appellant, the legitimate son and heir of the late Rajah, a — of Rs. 3,650 instead of Rs. 2,001, in the absence of all evidence as to what was the — actually paid by the respondent after the settlement was made. (P. C.) 3 P. C. R. 690.

3. Abatement of —. *See* Abatement; Estoppel 9.

4. A suit which is rather a claim for compensation for use and occupation of lands, cannot be described as a suit for arrears of — under Act VIII of 1869 (Bengal) s. 52. I. L. R. 2 Cal. 374.

5. "Tervai." *See* Insolvency 3.

6. Where the defendant pleaded, in answer to plaintiff's suit for arrears of —, that defendant no longer held as tenant, but as sub-proprietor under settlement made direct with defendant by Settlement Officer: *Held* that, under Act XVIII of 1873 s. 189, the suit involved a question of proprietary title, and that the appeal lay to the District Judge although the amount in suit was less than Rs. 100. I. L. R. 1 All. 366.

7. B and N the mortgagees of a mehal, granted the mortgagors a lease of the mehal, the mortgagors agreeing to pay "the mortgagees a certain — half-yearly" on account of the right they held in equal shares, and that, in default of payment of such —, "the mortgagees" should be entitled to sue for payment. The mortgagors having made default in payment of the —, and N refusing to join in a suit against the mortgagors to enforce payment, B sued them alone for a moiety of the — due. The Revenue Court of first instance held, with reference to Act XVIII of 1873 s. 106, that B could not sue separately: *Held* by the High Court that the order of the Revenue Court of first appeal directing *inter alia* that the Court of first instance should retry the suit after making N a defendant in the suit was not illegal, notwithstanding that the provisions of Act X of 1877 s. 32 were not made applicable to the procedure of the Revenue Courts by Act XVIII of 1873. I. L. R. 2 All. 264.

8. *Held also* that Act XVIII of 1873 s. 106 did not apply, and B was entitled separately to sue for the whole of the —. *Ib.*

See Abatement.
Arbitration 26.
Assignment 4.
Bhaolee.
Churs 22.
Co-Sharers 8, 4, 5, 7, 10, 14, 16, 17, 18.
Distraint 1.
Ejectment 2, 3, 6.
Endowment 4.
Enhancement.
Estoppel 13.
Ground Rent.
House Rent.
Interest 12.
Joinder of Causes of Action 8.
Jurisdiction 28, 31, 38, 50.
Khas Mehal 1.
Kuboolent 1.
Lakheraj 1, 2, 3.
Landlord and Tenant 3, 4.
Lease 1*a*, 4, 9.
Limitation 14, 25, 29, 30, 37, 39, 46, 49.
Lumbardar 4.
Manager 4.
Meerasee 8.
Mesne Profits 12.
Mokurruree 9.
Mortgage 56, 92, 111.
Onus Probandi 4.
Putnee 1, 4, 5, 10, 14, 15.
Reclaimed Land 1.
Registration 26.
Res Judicata 15, 20, 23, 30.
Right of Occupancy 5, 7.
Sale 3.
,, (in Execution of Decree) 29, 35, 36.
Service Tenure 5.
Small Cause Court 23, 24.
Special Appeal 6.
Under Tenure 3.
Zur-i-peshgee 1.

Renunciation.

See Hindoo Law (Adoption) 42.
Mahomedan Law 3.
Trust 4.
Will 52.

Repair.

See Limitation (Act XV of 1877) 83.

Repeal.

1. Effect of — of statute or other legislative enactment. *See* Cazee 1; Execution of Decree 18; High Court 30; Jurisdiction 24; Limitation (Act IX of 1871) 27; Registration 31.

See Jurisdiction 20, 24.
Murder 1.
Possession 18.
Registration 23.
Succession 4.

Representative.

See Ancestral Property 1.
Attorney and Client 9.
Auction-Purchaser (Execution-Sale) 1.

REPRESENTATIVE (*continued*).

See Certificate 7.
Co-Sharers 11.
Dower 8.
Estoppel 10.
Execution of Decree 21, 25, 26, 39.
Guardian and Minor 15, 30.
Lease 9.
Letters of Administration 2.
Limitation (Act IX of 1871) 48.
,, (Act XV of 1877) 5, 53, 55.
Mortgage 59.
Oudh Estates 13.
Partition 20.
Practice (Appeal) 17, 30.
,, (Parties) 2.
,, (Suit) 12.
Pre-emption 5.
Res Judicata 21.
Sale (in Execution of Decree) 3, 4.
Vendor and Purchaser 8.
Will 55.

Rescission.

See Contract 21, 22.
Hindoo Law (Coparcenary) 24.
Sale 6, 11.
Vendor and Purchaser 5, 6.

Reservoir.

See Public Spring or Reservoir.

Residence.

1. Where a testator disinherited his son, and the final decision on the construction of the will was that, upon the expiration of defendant's life interest, the son was entitled as heir to the estate; and the son brought this suit for a declaration of cesser of defendant's interest by his non-compliance with the condition in the will relating to — in the testator's boitakanah: *Held* that defendant's delay in commencing — was justified by his inability to get possession of the entire house from the trustees, and by the unfit state of the house for — owing to want of repairs. (P. C.) 3 P. C. R. 46 (22 W. R. 377; 14 B. L. R. 60; L. R. 1 I. A. 387).

2. What acts were held to amount to the use of the house as a —. (P. C.) *Ib.*

3. The meaning to be given to the word — in legislative enactments depends upon the intention of the Legislature in framing the particular provision in which the word is used. The — intended in Act X of 1877 s. 380 is — under such circumstances as will afford a reasonable probability that the plaintiff will be forthcoming when the suit is decided. (O. J.) I. L. R. 3 Bom. 227.

See Arbitration 8.
Deccan Agriculturists Relief 3, 4.
Execution of Decree 16.
High Court 38.
Hindoo Widow 21, 35.
Hoondee 5.
Jurisdiction 12, 23, 27.
Manager 4.
Partition 21.
Partnership 13.

Resignation.

1. Of agency. *See* Limitation 4

See Arbitration 3, 4.
Meerasse 2, 3, 4, 6.
Razinama.

Res Judicata.

1. The reservation by a Court in a decree in a former case of liberty to plaintiff to bring a fresh suit, does not prevent the Court, when such fresh suit is brought, from entering into the question of —. (P. C.) 2 P. C. R. 269 (12 W. R. P. C. 43; 3 B. L. R. P. C. 48; 13 Moo. 160).

2. A suit to recover possession, as part of her own talook, of land which plaintiff had claimed in a former suit as *towfeer* reclaimed and occupied, is barred by Act VIII of 1859 s. 2. (P. C.) 2 P. C. R. 653 (18 W. R. 163; 11 B. L. R. 158).

3. An order declining to execute a decree for want of jurisdiction is not an adjudication within the rule of —, or within Act VIII of 1859 s. 2, so as to bar a subsequent application for the execution of that decree. (P. C.) 3 P. C. R. 423 (L. R. 4 I. A. 127; I. L. R. 3 Cal. 47). *Followed in* I. L. R. 6 Cal. 203.

4. In a suit to recover possession of certain houses and grounds appertaining to plaintiff's zemindaree, it appeared that the property had formed the subject of another suit brought by the plaintiff against his grandfather's widow and the defendant's father and aunt in which the plaintiff's claim to restrain the widow from acts of waste had been dismissed, no claim, however, on the property having then been made by the plaintiff, nor any allegation made or evidence offered to connect the defendant's father therewith: *Held* that the decision in the former suit was not a decision in a suit between the same parties, or parties under whom they claimed, establishing the right of the defendants in the former suit to the property in question in the present suit, and that the cause of action in the present suit was not determined in the former suit. (P. C.) L. R. 5 I. A. 206 (I. L. R. 2 Mad. 23).

5. A decree in a former suit was held to be no bar under Act VIII of 1859 s. 2 to the present suit for possession of mouzah M B, merely because in the schedule to the plaint in the former suit mouzah B, which was the subject of that suit, was described as "mouzah B, usli with dakhili, that is, mouzah B and mouzah M B," whereas in the body of the plaint it was described simply as mouzah B; the description in the body of the plaint, and not that in the schedule, being that upon which the Court was called upon to adjudicate. (P. C.) 3 P. C. R. 783.

6. The Privy Council held that the respondent was barred from bringing the present suit by the decision of their Lordships in the former suit. (P. C.) 3 P. C. R. 785.

7. Certain property, originally belonging to the husband of the plaintiff, was conveyed by him by deed of gift to his daughter, after her marriage with the defendant as her streedhun. Some years after the daughter's death, the plaintiff brought a suit to recover the property on the ground that the deed of gift was a forgery, and that she was entitled to the property as heiress of her husband; but her suit was dismissed, the deed of gift being found to be genuine. In a suit subsequently brought to recover the same property on the ground that the plaintiff was heiress of her daughter: *Held* by the majority of the F. B. (Garth *C. J. dissentiente*) that the suit was barred under Act VIII of 1859 s. 2. (F. B.) I. L. R. 2 Cal. 152.

In a suit for a specific sum of money, it was held, in accordance with the above ruling, that the plaintiff was bound to put forward every right under which he claims. I. L. R. 3 Cal. 23.

8. A, a Hindoo widow, brought a suit to recover possession of her husband's share of certain joint property. After partially examining some of her witnesses, she cited the defendant as a witness, and on his failure to attend, her suit was dismissed. After the death of the widow, her daughter sued the same defendant on behalf of her two minor sons, as being entitled in reversion to their grandfather's share, to recover the share which was the subject of the former suit; the defendant was summoned as a witness, but failed to attend: *Held* that the suit was not barred under Act VIII of 1859 s. 2 as being a —, until it was shown that the former decree had been obtained after a fair trial of the right so as to bind not only the widow but the reversioners.

Res Judicata (*continued*).

The defendant having failed to attend and give evidence on this point, the Court was justified in giving the plantiff a decree under s. 170. I. L. R. 2 Cal. 222.

9. A previous suit in which the plaintiff elected to sue the defendants as principals bars a second suit on the same contract in which the same defendants are charged as responsible agents under a trade usage. I. L. R. 1 Bom. 87.

10. Where the relief sought for in respect of certain property in a suit is different from the relief sought for in respect of the same property in a prior suit (between the same parties or their privies), but the title on which the relief sought for is based is the same in both suits, the dismissal of the former suit for failure to establish such title is a bar to the second suit. I. L. R. 1 Mad. 84.

11. The dismissal of a claim for failure on the part of plaintiff to produce evidence to substantiate it, is of the same effect as a dismissal founded upon evidence, for the purpose of barring a second suit as —. *Ib.*

12. When a plaintiff claims an estate, and the defendant, being in possession, and knowing that he has two grounds of defence, raises only one, he shall not, in the event of the plaintiff obtaining a decree, be permitted to sue on the other ground to recover possession from the plaintiff. Where therefore the defendants purchased an estate in the plaintiff's possession, and sued him to recover possession of it, and the plaintiff resisted the suit merely on the ground that he was the auction-purchaser of it, and the defendants obtained a decree, and the plaintiff then sued claiming a right of pre-emption in respect of the property, a claim which he might have asserted in reply to the former suit: *Held* that he was debarred, under Act VIII of 1859 s. 2, from suing to enforce such claim. I. L. R. 1 All. 75, 316.

13. On her husband's death a Hindoo widow obtained possession of his estate as his heir; and, in a suit against her for possession thereof by certain persons claiming to succeed to the estate as rightful heirs, a decree was obtained by them: *Held* that such a decree was a bar to a new suit against those persons by the daughter claiming the estate in succession to the widow, the decree having been fairly and properly obtained against the widow. I. L. R. 1 All. 282.

14. A Court of competent jurisdiction, having tried and determined an issue arising in a suit on which the suit might have been disposed of, proceeded to try and determine another issue which also arose out of the pleadings, but the determination of which in that suit was not required for its disposal: *Held* that such Court was not bound under the circumstances to refrain from trying and determining such last-mentioned issue, and that the trial and determination of it could not be treated as a nullity, and the issue could not again be tried and determined in another suit. I. L. R. 1 All. 480.

15. Plaintiffs brought this suit to establish, as against the defendants, their title to certain land in the occupation of a tenant. In a previous suit instituted by one of the present defendants against the tenant for rent, one of the present plaintiffs (representing the right now claimed by all of them) intervened as a defendant, on the ground that he was the person entitled to the rent, and failed to establish his claim: *Held* that the plaintiffs in this suit were barred by the judgment in the former suit. (F. B.) I. L. R. 3 Cal. 145.

In like manner, A sued B to establish his right of possession to certain lands allotted to him under a *butwarra* made in accordance with Reg. XIX of 1806. In a previous suit by B instituted after the *butwarra* against a tenant for arrears of rent due for a portion of the land now in dispute, A intervened and was made a defendant on the sole ground that he was the person entitled to the rent, but failed to establish his claim: *Held* that A's present suit was barred by the judgment in the former suit. I. L. R. 3 Cal. 705. *See also* I. L. R. 5 Cal. 832.

16. When once it is made clear that the selfsame right and title is substantially in issue in two suits, the precise form in which either suit was brought, or the fact that the plaintiff in the one case was the defendant in the other, became immaterial. (F. B.) I. L. R. 3 Cal. 145.

17. An application by petition under Act II of 1874 s. 63 is a suit within the meaning of Act X of 1877 s. 13, and therefore is barred by the disposal of a former application in the same matter under the same section or under Act XXIV of 1867 s. 60 which the Act of 1874 repeals; this is so whether the order is one for payment of money or one dismissing the petition. (O. J. Ap.) I. L. R. 3 Cal. 340.

18. The plaintiffs in the present suit claimed, as the heirs of J, certain property from M, the daughter of R, alleging that such property was the joint and undivided property of R and J, to which on R's death J had succeeded. The plaintiffs had formerly, after the death of J, sued M for such property, alleging that it was the separate property of R, and that on the death of R's widow they were entitled to succeed thereto: *Held* that the decision in the former suit that such property was the separate property of R to which M was entitled to succeed on the death of his widow was a bar to their present suit. I. L. R. 1 All. 560.

19. A, the auction-purchaser of certain immoveable property at an execution-sale, purchased with notice that a suit by H and M against the judgment-debtor and the decree-holder for a share in such property was pending, but did not intervene in such suit. Before the sale to A was made absolute, H and M obtained a decree in the suit for a moiety of the share claimed by them. A took no steps to get such decree set aside, but sued them to establish his right to such moiety in virtue of his auction-purchase. It appeared that the Court which passed the decree in favor of H and M did so without jurisdiction: *Held* that, inasmuch as the suit in which such decree was made was tried and determined by a Court having no jurisdiction, it could not be held that A was bound to intervene in it and dispute the claim preferred therein, or that he was bound by such decree, and that it could not be said that A was bound to take steps to get such decree set aside by means of appeal, or that because he had omitted to do so, it had become binding on him, and his suit was precluded. I. L. R. 1 All. 588.

20. Plaintiff sued defendant in 1873 for arrears of rent at a certain rate. Defendant pleaded that the land had been held by him at an uniform rent for more than 20 years, and this contention was supported by the Court. Plaintiff then gave defendant notice of enhancement, and sued to recover rent for two years at the rate stated by defendant, and for one year at an increased rate. To this suit defendant raised substantially the same defence: *Held* that the decision in the previous suit was not a bar to the present suit, there being two questions for consideration, *viz.* whether there had been an uniform payment of rent for 20 years, and if so, whether the presumption, which the law directs to be drawn from such uniform payment, had been rebutted by plaintiff; neither of which questions had been concluded by the previous decision. I. L. R. 3 Cal. 789.

21. Judgments and decrees recognizing rights between parties to a suit or between persons whom they represent, although they are not conclusive under Act I of 1872 as they were before that Act came into operation, are yet admissible in evidence under s. 13 of the Act, even if the parties in the former suit be entire strangers. Where the parties are the same, or representatives of those in the former suit, such judgments and decrees may be evidence so nearly conclusive as, when produced by the party in whose favor they are, to shift the burden of proof from him to his opponent. I. L. R. 3 Bom. 3.

22. *Semble.* Under Act X of 1877 s. 13 the law is now the same as it was under Act VIII of 1859 prior to the passing of Act I of 1872. *Ib.*

23. A brought a suit against B for arrears of rent. B admitted the sum claimed, but contended that the rent was due for a larger area of land than that specified in the plaint. An issue was framed on such contention, and decided against B. In a subsequent suit by B to have it declared that a sum of money, equal in amount to the sum paid on admission in the former suit, comprised the rent due on all the lands held by him under A: *Held* (on appeal under cl. 15 of the Letters Patent, reversing the decision of the Court below) that such suit was barred as being —. I. L. R. 4 Cal. 686.

24. Plaintiff purchased certain lands from the heirs of a Mahomedan, and defendant purchased other lands of the same estate from their co-heirs. In 1864 plaintiff's suit to have the sale to the defendant set aside was dismissed upon his admission that he was in possession of all the lands he had bought. In 1869 he brought a suit, in the form of a partition-suit, praying for demarcation of the lands bought

RES JUDICATA (*continued*).

by defendant and himself, which was rejected on the same ground as the first suit; and he was not allowed in appeal to raise for the first time the point that, since the date of his admission in the first suit, some of his tenants had attorned to defendant. His present suit was founded on the attornment of his tenants to defendant in 1868, and he contended that, although the cause of action was in existence when the second suit was brought in 1869, it had not been adjudicated upon, and in appeal he had been prevented from arguing it: *Held* that plaintiff was estopped. The causes of action in the second and third suits were identical. Having striven to establish his title by one means and failed, plaintiff could not establish the ame title by other means which were equally at his command when the previous suit was instituted, and which were so connected with the grounds on which he in that suit relied, that they ought to have been submitted together for the consideration of the Court. I. L. R. 3 Bom. 137.

25. In determining whether a question is —, the Court will have regard to the substance of the previous suit rather than its form. If the cause of action is based on a right identical in both suits, or on the same group of facts infringing that right, the second suit is barred. *Ib.*

26. Plaintiff brought in 1876 a suit against defendant in respect of the same subject-matter and founded on the same cause of action as the present suit. Issues of fact arising on the merits were enquired into: but a certificate of the Collector under Act XXIII of 1871 s. 6, which was necessary to give jurisdiction to the Court, not having been obtained, the claim was rejected on that ground: *Held* that the Court not having legally pronounced on the merits of the former case, the opinions expressed on the issues were not — so as to bar the maintenance of the present suit. I. L. R. 3 Bom. 223.

27. Where M, the recorded proprietor of an estate, applied to have his share of such estate separated, and an objection was made to such separation by H, another recorded proprietor of the estate, which raised the question of M's proprietary right to a portion of his share, and the Collector proceeded under Act XIX of 1863 s. 8 to enquire into the merits of such objection and decided that M's interest in such portion of his share was that of a mortgagee and not a proprietor, and M did not appeal against such decision, and it became final: *Held*, in a suit in the Civil Court by M against B in which he claimed a declaration of his proprietary right to such portion, that a fresh adjudication of his right was barred. I. L. R. 2 All. 294. *See* I. L. R. 2 All. 839.

28. Plaintiff sued for a declaration of *mourosee mokurruree* rights to certain lands and for mesne profits, alleging that he had been wrongfully ejected by the predecessors in title of the defendants. A previous suit on the same cause of action was heard and dismissed on the ground of limitation: *Held* that the present suit was not barred as — under Act VIII of 1859 s. 2 (corresponding with Act X of 1877 s. 13), inasmuch as the first suit having been brought after the period allowed by law, the Court in which it was instituted was not competent to hear and determine it. I. L. R. 5 Cal. 246.

29. The plaintiffs in this suit, land-holders, had caused a notice of ejectment to be served on the defendants, their tenants under a lease, on the ground that the tenancy had expired. The defendants applied to the Revenue Court under Act XVIII of 1873 s. 39 contesting their liability to be ejected on the ground that the lease was a perpetual lease. The Revenue Court held, with reference to the word "*istemrarce*" contained in the lease, that the lease was perpetual, and the defendants were not liable to be ejected. The plaintiffs thereupon sued in the Civil Court for the cancelment of the word "*istemrarce*" in the lease, on the ground that it had been inserted fraudulently: *Held* on appeal from the decree of the Lower Appellate Court dismissing the suit as barred by the decision of the Revenue Court, that it was not so barred, the matter in dispute being peculiarly within the jurisdiction of the Civil Court and not one which a Revenue Court was competent finally to determine on an application under Act XVIII of 1873 s. 39. I. L. R. 2 All. 428.

30. In the year 1877 A, who was the owner of a fractional share of a zemindaree, which was let in *putnee*, and of a four-anna share in the *putnee*, sued his co-sharers in the *putnee* for his share of the arrears of rent for the years 1873 to 1875, after deducting the rent of his four-anna share. Before the hearing of the suit, B intervened alleging that he had purchased a six-anna share of the *putnee* and he was made a defendant. A then discovered that his co-sharers in the *putnee* had sold their remaining shares to C. A applied to make C a party to the suit, and subsequently for leave to withdraw the suit. Both these applications were refused, and a decree for the arrears of rent was made. A, alleging that he did not wish to enforce the decree in the previous suit, then instituted this suit against C and the defendants in the former suit, for the purpose of recovering arrears of rent for the years 1874 and 1875 from C, in proportion to the share purchased by him: *Held* that the relative position of C to the defendants, whose share he had purchased, resembled that which exists between persons who have made themselves jointly and severally liable to perform a particular contract; and that as a decree obtained against one of the joint and several promisors without satisfaction, is no bar to a suit against another, the present suit was not barred by the decree obtained in the suit of 1877. I. L. R. 5 Cal. 291.

31. An unsuccessful intervention on a son's behalf when a minor, by his father as his guardian, to set aside an execution-sale of ancestral property on the ground of irregularity, was held to be no bar to the present suit brought by the manager of the son's estate appointed under Act XL of 1858 against the auction-purchaser and the father to recover possession of the property on the ground that the property in dispute, being part of a joint family estate governed by the Mitacshara law, could not be sold for the satisfaction of such debts of the father as were not binding upon the son. I. L. R. 5 Cal. 425.

32. The right of succession to the property of a deceased Lingayat priest being disputed, the District Judge placed it under the management of the Nazir under Reg. VIII of 1827 (Bombay) s. 9. S claiming the whole property as disciple of the deceased brought a suit in 1869 against defendant to establish his right to the same and to recover possession of it. The suit was compromised by an agreement upon which the Court passed a decree in March 1870 dividing the property in certain shares between S and defendant. When S and defendant applied for possession of the property in execution of this decree, the Nazir, who had charge of it, resisted them; and the execution proceedings dropped in consequence of the death of S. Thereupon, plaintiff (as a disciple of S) and defendant sued the Nazir separately, each claiming the whole property. Plaintiff's suit (in which he produced neither the compromise nor the decree passed thereon) was rejected on the ground that he had failed to prove himself the disciple of S. Defendant succeeded in his suit and obtained possession of the whole property. Plaintiff's present suit, as a disciple of S, to recover from defendant the portion of the property which fell to S according to the compromise on which the decree was made in March 1870, was held barred alike by Act VIII of 1859 s. 2 and Act XXIII of 1861 s. 11. I. L. R. 4 Bom. 247.

33. When a question of title has to be, and is, decided by a Court of competent jurisdiction with reference to the value of the subject-matter in dispute, such decision, or the ultimate decision upon appeal from such decision is final, and the question of title becomes a — as between the parties to the suit, although it may have the effect of determining the title to an estate or estates, the value of which exceeds the jurisdiction of the Court in which the suit was instituted. I. L. R. 5 Cal. 832.

34. In considering, on the hearing of an appeal, the competency of a Court for the purpose of deciding upon a question of —, the powers of the Court in which the suit was instituted, and not those of the Court in which the suit was decided on appeal, must be looked to. *Ib.*

35. In the case of an objection to a partition raising a question of title, it is only when the Collector or Assistant Collector records a proceeding declaring the rights of the parties, after an adjudication of the objection on its merits, that his order becomes an order under Act XIX of 1873 s. 113, within the meaning of s. 114 of that Act. Where, therefore, an Assistant Collector made an order disallowing an objection to a partition raising a question of title, on

RES JUDICATA (*continued*).

the ground that such question had been determined against the objector in a suit for profits between the parties: *Held* that such order was not a decision of a Court of Civil Judicature, within the meaning of Act XIX of 1873 s. 114, but that it could be contested by a suit in the Civil Court. I. L. R. 2 All. 839.

36. M sued R in the Court of the Moonsiff for a bond, alleging that he had satisfied the bond-debt, and for a certain sum which he alleged had been paid by him to R in excess of the bond-debt. On 24th November 1875, the Moonsiff, having taken an account and found that Rs. 188-7-4 of the bond-debt were still due, made a decree dismissing the suit. R appealed to the Subordinate Judge, who on 16th September 1876, finding that Rs. 520-2-2 of the bond-debt were still due, affirmed the Moonsiff's decree. M appealed to the High Court on the ground that an appeal by R did not lie to the Subordinate Judge, as R was not aggrieved by the Moonsiff's decree. The Division Bench before which the appeal came, on 10th August 1877, holding that R was not competent to appeal to the Subordinate Judge, set aside the proceedings of the Subordinate Judge. In deciding the case the Division Bench made certain observations to the effect that the account between the parties was not finally settled, but might be taken again in a fresh suit. In November 1877, M instituted a fresh suit against R to recover the bond on payment of Rs. 188-7-4, the sum found by the Moonsiff in the former suit to be due by him to R: *Held* on the question whether the finding of the Moonsiff in the former suit was final and conclusive between the parties or the account might be again taken, that that finding on a matter directly and substantially in issue in the former suit which was heard and finally decided by the Moonsiff, was final and conclusive between the parties and the account could not be again taken: *Held* also that the observations of the Division Bench in the former suit were mere *obiter dicta* which did not bind the Courts disposing of the fresh suit. (F. B.) I. L. R. 2 All. 843.

37. Act X of 1877 s. 13 expl. 5 would not make a judgment obtained in a suit against one co-sharer binding on another co-sharer no party to such suit, in respect of the rights enjoyed in common by such co-sharers in their common property. Nor could such explanation be applied to a case instituted, or the judgment delivered in such case, during the time when the old Act was in force. I. L. R. 6 Cal. 31.

38. Act X of 1877 s. 13 expl. 5 only applies to cases where several different persons claim an easement or other right under one common title, *e.g.* where the inhabitants of a village claim by custom a right of pasturage over the same tract of land or to take water from the same spring or well. I. L. R. 6 Cal. 49.

39. Where therefore A, in defending a suit brought against him by B, to have it declared that he had a right to build a wall across a drain, set up a prescriptive right to use the drain, and it was decided that no such prescriptive right existed in A; and subsequently, C brought a suit against B, claiming to use the same drain as an easement and asking for the removal of the wall in question in the former suit, and B set up the judgment in the suit between himself and A as a bar to the suit: *Held* that the right claimed by C not being one which he and other inhabitants of the neighbourhood claimed under one common title, but a prescriptive right which he claimed individually *in respect of his own house and premises*, and depending upon the length of time he had used the right, was a separate claim, and that the judgment in the suit between B and A did not operate as a bar to his suit. *Ib.*

40. Where a plaintiff claimed certain property, and two persons intervened and were allowed to put in their claim to a portion of it, which claim at the hearing the intervenors, however, refrained from pressing, and the suit was decided in favor of the plaintiff, the original defendant alone appealing (unsuccessfully) against the decree: *Held* that it was not open to the intervenors to institute any fresh proceedings to obtain the property against the original defendant; the decree in the suit in which they intervened being conclusive as between them and such defendant. I. L. R. 6 Cal. 91.

41. In 1871, the plaintiff sued to establish his sole right to a portion of a field on the ground that it had been allotted to him by partition. The defendant also claimed it as his share obtained by partition. The Court rejected the plaintiff's claim, holding that no partition had taken place, and that the field was the joint property of five coparceners, including the plaintiff and defendant. In 1878, the plaintiff brought a second suit for a partition of the field, including the portion for which his former suit had been instituted: *Held* that the present suit for partition was not barred by the previous suit which was brought to establish the plaintiff's sole right to the lands in question. I. L. R. 5 Bom. 27.

See Custom 9, 10, 11.
Decree 13, 16.
Enhancement 35.
Estoppel 1.
Gift 12.
Hereditary Office 8.
Judgment 1.
Julkur 5.
Lunatic 1.
Partition 12.
Privy Council 32, 33.
Promissory Note 3.
Putnee 10.
Small Cause Court 24.

Restitution.

See Bailment 4.
Conjugal Rights.
Execution of Decree 22.
Limitation (Act IX of 1871) 70.

Restoration.

See Deposit 1.
Distraint 1.
Plaint 8.
Possession 18.
Property Seized by Police.
Stolen Property.

Restraint of Trade.

1. D and E, being in England, entered into a written agreement with A B and C, the partners of a firm at Madras, to go to Madras and there enter into the service of the firm; the service to last for 5 years, or to determine at any time by certain notice being given; and covenanted that on the expiry of the 5 years, or sooner determination of the service, they would not carry on within 800 miles from Madras any business carried on by the firm, and that, on such expiry or sooner determination, they would, whenever requested by the firm so to do, return to England. In pursuance of the agreement, D and E went to Madras and entered into the service of the firm. After 2½ years the service was determined by notice from the firm. D and E then, in violation of their said covenants, refused to return to England, though requested to do so by the firm, and proceeded to set up, on their own account, business of the same kind as that carried on by the firm: *Held*, in a suit by the firm against D and E for damages for breach of the said covenants, and for a perpetual injunction restraining D and E from carrying on in Madras, or within 800 miles of Madras, any business carried on by the firm, that, treating the covenant in — as one entered into in England, it could not, even if valid by the law of England, be enforced in India, inasmuch as its object was to contravene the law of India (Act IX of 1872 s. 27); that that covenant would have been void by the law of England, because the limit of the restriction was unreasonable, and as no narrower limit had been mentioned in the agreement, this was not a case where the covenant could have been enforced within a narrower and reasonable limit; and that the covenant to

RESTRAINT OF TRADE (*continued*).

return to England, except so far as it operated improperly in —, was a covenant the breach of which did not in any way cause damage to the firm, and therefore such breach did not entitle them to any damages. (O. J.) I. L. R. 1 Mad. 134.

Resumption.

See Badshapore.
Building Lease 2.
Churs 4, 18.
Desai 1.
Enam 1.
Ghatwals 2.
Jurisdiction 53.
Lakheraj.
Limitation (Reg. II of 1805) 1.
Mokurruree 7.
Onus Probandi 4.
Oudh Estates 6.
Pension 8.
Service Tenure 1, 2, 3, 4.
Zemindaree 5.

Revenue.

1. Revenue-free. *See* Krishnarpan; Lakheraj.

See Auction-Purchaser (Revenue-Sale).
Building Lease 1, 2, 3.
Churs 19.
Contribution 1.
Customs.
Desai 1, 2.
Deshmukhs 1.
Enam 2.
Grant 6.
Julkur 3.
Jurisdiction 26, 50.
Kanara 1.
Kubooleutdar Khot 1.
Lumbardar 1, 2.
Meerasee 5.
Mortgage 58, 116.
Pension 1, 2.
Possession 1.
Revenue Court.
,, Officers.
,, Settlement.
Sale (for Arrears of Revenue).
,, (in Execution of Decree) 8, 18.
Small Cause Court 23.
Toda Giras Huk 5.
Trespasser 1, 2.
Value of Suit or Appeal 1.
Vendor and Purchaser 8.

Revenue Court.

See Criminal Proceedings 18.
Hereditary Office 8.
Jurisdiction 1, 28, 29, 31, 43, 50, 58.
Land Dispute 2.
Lumbardar 2.
Mortgage 111, 112.
Res Judicata 29.

Revenue Officers.

See Customs 1, 2.
Jurisdiction 20.

Revenue Settlement.

1. An officer who is appointed to consider and revise the revenue assessed upon certain estates, has no power to convey away the proprietary right of the Government in those estates. (P. C.) 3 P. C. R. 141.

2. Tenants are not concluded by a mistake in settlement papers, nor does Reg. XXV of 1802 provide for forfeiture of rights by parties who by carelessness or accident allow their land to be misdescribed in settlement proceedings. (P. C.) 3 P. C. R. 215 (25 W. R. 3).

3. Although a — made under Act IX of 1847 is final, the fact of such settlement will not preclude a proprietor from seeking in a Civil Court to establish his right to the lands so settled. I. L. R. 4 Cal. 103.

See Churs 18, 19, 20.
Custom 19.
Evidence (Documentary) 8.
Julkur 3.
Meerasee 6.
Mortgage 93.
Oudh Estates 6.
Relief 2.
Rent 2, 6.
Trust 8.
Vendor and Purchaser 8.

Reversioner.

1. A suit by a — to restrain a widow or other Hindoo female from acts of waste, although his interest during her life is future and contingent, must be brought with that object and for that purpose alone, and the question to be discussed would be solely between him and the widow; he could not, by bringing such a suit, get, as between him and a third party, an adjudication of title which he could not get without it. (P. C.) 3 P. C. R. 106 (23 W. R. 314; 15 B. L. R. 83; L. R. 2 I. A. 169).

2. Plaintiff's mother was entitled to certain property for her life under an award under which the plaintiff was entitled to succeed to the property after her mother's death. Plaintiff sued her mother and the holder of a decree, in execution of which the property had been sold, praying for a declaration of her right to succeed to the property, and that the said decree and sale might be declared void against her, alleging that the decree had been obtained and executed by collusion between the defendants: *Held* that the suit could be maintained under the foregoing ruling of the Privy Council. I. L. R. 1 All. 371.

3. S was entitled under the Mitacshara law to succeed, on the death of M her mother, to the real estate of N her father. Certain persons disputed S's right of succession, and claimed that they were entitled to succeed to N's estate on M's death, and complained that M was wasting the estate. The differences between such persons and M and N were referred by them to arbitration, and an award was made and filed in Court, which, among other things, partitioned the estate between S and such persons. G, who claimed the right to succeed to the estate on S's death, sued for the cancellation of the award on the ground that it was fraudulent and affected her reversionary interests: *Held* that the suit was maintainable notwithstanding that G was not the next —. I. L. R. 2 All. 41.

4. Persons having a contingent reversionary interest in lands, expectant on the death of a Hindoo widow, though they cannot sue for a declaration of title to the lands as against third persons, may sue as presumptive heirs to set aside alienations of the property made by the widow, upon the ground of there being no legal necessity for such alienations, or to restrain her from committing waste. Unless such suits could be brought, it might be impossible, if the

REVERSIONER (*continued*).

widow lived to a great age, to bring evidence after her death to prove that there was no legal necessity for the alienations. Nor would it be possible to prevent the widow from committing irremediable mischief to the estate. I. L. R. 6 Cal. 198.

See Custom 9, 10, 11, 12.
Grant 4.
Guardian and Minor 10.
Hindoo Law (Adoption) 18, 47, 48, 49.
,, Widow 2, 8, 14, 15, 19, 20, 36, 54.
Limitation 10.
,, (Act IX of 1871) 97, 103.
Mahomedan Law 5.
Res Judicata 8.

Review.

See Practice (Review).

Revival of Complaint.

See Discharge 2, 5.
Dismissal of Complaint 1.
Lunatic 2.

Revival of Decree.

See Execution of Decree 21.
Limitation 21, 38.
,, (Act IX of 1871) 47, 98.
,, (Act XV of 1877) 52, 53.

Revival of Suit or Appeal.

See Limitation (Act XV of 1877) 46.
Practice (Appeal) 17.
,, (Suit) 12, 19.

Revocation.

See Arbitration 7, 8.
Divorce 9.
Endowment 38, 39.
Excise 2, 4.
Karanavan 4.
Oudh Estates 10.
Practice (Suit) 3.
Principal and Agent 6.
Sunnud 3.
Will 18, 21, 26.

Rights.

See Arbitration 7.
Cancellation.
Cattle Grazing 1.
Churs 7.
Conjugal Rights.
Contract 21, 22.
Deshmukhs 1.
Enam 2.
Equitable Rights.
Escheat.
Forfeiture 1.
Gift 15.
Grant 6, 7.
See Hereditary Office.
,, Right.
Husband and Wife 7.
Insolvency 11.
Julkur.
Jurisdiction 31, 32.
Jus Tertii.
Lakheraj 1, 2.
Libel 1.
Lien 2.
Limitation 44.
,, (Act XIV of 1859) 28.
,, (Act IX of 1871) 10, 77.
,, (Act XV of 1877) 8.
Maintenance.
Malgoozar.
Malikhana.
Meerasee 2, 6.
Mines.
Mischief 1.
Mortgage 37, 46.
Oudh Estates 8, 12.
Practice (Appeal) 30.
Pre-emption.
Prescription.
Relief.
Rescission.
Right of Appeal.
,, Occupancy.
,, Pasturage.
,, Private Defence.
,, Property.
,, Suit.
,, Way.
Right to Light and Air.
,, Water.
Sale (in Execution of Decree) 9.
Set-Off.
Survivorship.
Tank 1.
Timber 2, 3.
Title.
Trade Mark 2.
Zemindaree 4.

Right of Appeal.

See Administrator-General 1.
Arbitration 3, 9, 12, 13, 15, 24.
Attachment 20.
Certificate 1, 9.
Contract 16.
Court Fees 1, 2.
Decree 16.
Dismissal of Suit or Appeal 2.
Ejectment 6.
Enhancement 35.
Execution of Decree 19, 46.
Ex-Parte 1, 2, 3, 5.
High Court 8, 16, 21, 24, 29, 30, 31, 32.
Insolvency 10, 17.
Jurisdiction 42.
Jury 8.
Lakheraj 1.
Mortgage 50, 73, 115.
Municipal 1.

RIGHT OF APPEAL (*continued*).

See Murder 2.
Partition (Butwarra) 2.
Pauper Suit or Appeal 6.
Plaint 5, 14.
Practice (Appeal) 12, 17, 20, 21.
,, (Review) 20, 21.
,, (Suit) 18.
Privy Council 35, 37, 38, 40.
Putnee 9.
Registration 23, 28, 31.
Rent 6.
Res Judicata 36.
Sale (in Execution of Decree) 14, 17, 37, 39, 41, 52.
Stamp Duty 10, 16.
Unlawful Assembly 1.

Right of Occupancy.

1. A — may be acquired in respect of an undivided share of an estate. (P. C.) 3 P. C. R. 550 (L. R. 5 I. A. 164).

2. Holding as ijaradars prior to and during their lease does not create in them a —. After the lease, they held over, subject to the terms of the lease. (P. C.) *Ib.*

3. Having regard to Act XVIII of 1873 s. 8, the right of an occupancy-tenant is transferable by sale in execution of decree, but only as between persons who have become by inheritance co-sharers in such right. (F. B.) I. L. R. 1 All. 353. *See* (F. B.) I. L. R. 2 All. 451.

4. But the above section does not prevent a landholder from causing the sale, in execution of his own decree, of the — of his own judgment-debtor in land belonging to himself. I. L. R. 1 All. 547. *Affirmed by* (F. B.) I. L. R. 2 All. 451, and *see also* I. L. R. 2 All. 735.

5. A ryot occupying and cultivating land for more than 12 years under a landlord who has no title to the land, nevertheless acquires a —. The right is not one conferred by any lessor. It is a right which, by virtue of the law, grows up in the ryot from the mere circumstance of cultivating the land for 12 years or upwards and paying rent due thereon. I. L. R. 3 Cal. 560.

6. The existence of a custom in a particular district by which a — in such district is transferable, will not justify the holder of such a — in subdividing his tenure, and transferring different parts of it to different persons; and in case of such transfer, the zemindar is entitled to treat the transferees as trespassers, and eject them. I. L. R. 3 Cal. 774.

7. The statutory — under Act VIII of 1869 (Bengal) cannot be extended so as to make it include complete dominion over the land, subject only to the payment of a rent liable to enhancement. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted; and although the Court in such cases will be disposed to place a liberal interpretation on the rights of the tenant, it will not sanction a complete change in the mode of enjoyment. I. L. R. 3 Cal. 781.

8. Occupancy ryot. *See* Tenant 9.

9. The — acquired by a cultivating ryot under Act VIII of 1869 (Bengal) s. 6, cannot be transferred either by a voluntary sale or gift, or by a sale in execution of a decree. I. L. R. 4 Cal. 925.

10. A firm of capitalists taking a lease of lands from a zemindar, and transmitting their rights to the changing members of the firm, cannot by any length of occupation acquire a — under Act X of 1859 s. 6 or Act VIII of 1869 (Bengal) s. 6. I. L. R. 4 Cal. 957. *Following* 25 W. R. 117.

11. The Lower Courts were held to have been wrong in giving plaintiff a decree for possession on the ground of a —, he not having claimed such relief in his plaint. I. L. R. 5 Cal. 246. *Following* 24 W. R. 444.

12. Where a ryot, having a mere — in certain land, has been wrongfully dispossessed by the zemindar, his suit to recover possession must be brought under Act VIII of 1869 (Bengal) s. 27 within one year from the date of dispossession. *Ib.*

13. A Government ryot can acquire a right of occupancy in respect of lands cultivated by him under the rent law in force in Assam. I. L. R. 6 Cal. 196.

See Enam 3.
Estoppel 19.
Evidence (Documentary) 10.
Julkur 8, 9.
Jurisdiction 43.
Mortgage 55, 56, 58.
Pre-emption 11.
Transferable Tenure 2.
Service Tenure 7.

Right of Pasturage.

See Cattle Grazing 1.
Res Judicata 38.

Right of Private Defence.

See Building 2.
High Court 33.

Right of Property.

See Conveyance (Transfer and Assignment) 2.
Court Fees 12.
Criminal Trespass 4, 5.
Enam 2.
Grant 5, 6.
Insolvency 12.
Julkur 3, 5.
Jurisdiction 50.
Lakheraj 3.
Libel 1.
Limitation (Act IX of 1871) 31, 45.
Mischief 2.
Mortgage 55, 58, 115.
Oudh 1, 4.
,, Estates 6.
Pre-emption 11.
Rent 6.
Revenue Settlement 1.
Road 1.
Settlement 1.
Small Cause Court 7.
Timber 3.
Trespasser 1.
Will 31.

Right of Suit.

1. Where it was clear that no intention existed between the parties to create new rights enforceable by suit in supersession of those acquired or declared by the decree in the former suit: *Held* that a suit on a "postpone petition" was not maintainable. I. L. R. 1 Mad. 387.

See Adjustment 1.
Arbitration 19.
Assignment 5.
Attachment 20.
Champerty 4, 6.
Compounding 1.
Contract 10.
Co-Sharers 3, 4, 5, 6, 7, 10, 14, 16, 17.
Costs 4.
Damages 3, 4.

RIGHT OF SUIT (*continued*).

See Distraint 1, 2.
Dower 2.
Ejectment 8.
Endowment 32, 34.
Excise 1.
Execution of Decree 2, 26, 43, 44.
Ferry 2.
Guardian and Minor 8, 18.
Hereditary Office 1, 2, 4, 5, 7.
Hindoo Law (Adoption) 48, 49.
,, (Coparcenary) 5.
,, (Inheritance and Succession) 25.
,, (Religious Ceremonies) 1, 2, 3, 4.
Hindoo Widow 36, 50.
Husband and Wife 5.
Insolvency 12, 13.
Insurance 5.
Julkur 5.
Khas Mehal 1.
Lakheraj 1.
Land Taken for Public Purposes 2.
Limitation (Act IX of 1871) 32.
,, (Act XV of 1877) 31.
,, (Reg. II of 1805) 1.
Maintenance 6.
Malicious Prosecution 2.
Meerasee 6.
Mortgage 19, 30, 40, 46, 111.
Municipal 4.
Obstruction 1, 2, 3, 4, 7, 8.
Patel 1.
Pottah 9.
Practice (Parties) 3.
Public Thoroughfare 1.
Putnee 8.
Registration 34.
Res Judicata.
Revenue Settlement 2.
Right to Water 1.
Sale (for Arrears of Revenue) 4, 5.
,, (in Execution of Decree) 4, 32, 33.
Slander 1.
Small Cause Court 28.
Will 31, 43, 55.

Right of Way.

1. Gates having been placed at one end of a private road by a person claiming to be its sole proprietor, with the intention of preventing the use of such private road by the public between the hours of sunset and sunrise, and the Deputy Commissioner of Darjeeling, acting for the public, having obtained from the Magistrate an order under Act X of 1872 s. 532 "that possession of the private road be not taken by the person claiming to be proprietor to the exclusion of the public . . . . until he shall have obtained the decision of a competent Civil Court adjudging him to be entitled to exclusive possession": *Held* that, there being no evidence of any one having exercised or claimed to exercise the right of passing over the road between sunset and sunrise, there was no dispute under s. 532; and that the order of the Magistrate was made without authority, and must be set aside. I. L. R. 5 Cal. 194.

2. Section 532 does not enable a Magistrate to make a purely declaratory order. It only enables him to prevent arbitrary interruptions by any person of rights actually enjoyed, which have been exercised by the public or a person or class of persons. *Ib.*

See Estoppel 12.
Limitation (Act IX of 1871) 8.
Obstruction 1, 8.
Public Thoroughfare 1.

Right to Light and Air.

1. Proof of an uninterrupted user of at least 20 years, with the consent of defendants, was held necessary to establish plaintiff's right to light in a suit brought by him for an injunction to restrain defendants from proceeding with a building, and to have a portion of it taken down which had the effect of obstructing plaintiff's light. (P. C.) 2 P. C. R. 801 (19 W. R. 194; 12 B. L. R. 406; L. R. I. A. Sup. 175).

2. *Quære.* Is not knowledge on the part of an agent who collects rent for the owner, and is entrusted with the authority of fixing the amount, constructive knowledge on the part of the owner sufficient to satisfy the exigence of proof on plaintiff in such a case? (P. C.) *Ib.*

3. The re-erection of his house by the defendant, notwithstanding notice from the plaintiff, so as to darken some of the principal rooms of the plaintiff's house, making them unfit for occupation during the day without artificial light, is an injury which cannot be adequately redressed by an award of damages, and against which the Court will grant relief by issuing a mandatory injunction, directing the defendant to pull down so much of the house as is necessary to stop the injury. I. L. R. 2 Bom. 133.

4. The probability of the defendant suffering a greater loss by the demolition of his house than the plaintiff, if his claim could be reduced to money, would suffer by being awarded a money compensation, is no ground for depriving the plaintiff of a mandatory injunction in his favor, except under special circumstances. *Ib.*

5. To determine what demolition of the house is necessary, the Court executing the decree was directed to employ a professional man agreed on by the parties if they could agree, or nominated by the Court if they could not. *Ib.*

6. Circumstances constituting delay and acquiescence discussed. *Ib.*

7. Plaintiff and defendant being owners of two adjacent houses with a common party wall between them, the former placed a window frame in an aperture in an upward extension of his part of the wall which he had erected eight years before suit, and the latter thereupon raised the wall on her side so as to cut off the supply of light and air which plaintiff used to receive before and after the placing of the window frame: *Held* that there had been no appropriation of the light and air by plaintiff for the statutory period (twenty years) creating in him a right of easement, and entitling him to relief against the inconvenience sustained by him. I. L. R. 2 Bom. 660.

Right to Water.

1. There may be, where a right is interfered with, *injuria sine damno* sufficient to found an action; but no action can be maintained where there is neither *damnum* nor *injuria*. So where a riparian proprietor encroached on the bed of a Khal in the possession of the Government, and built a wall on it, it was held that the plaintiff, not having all the rights of a riparian proprietor, could not maintain a suit for the removal of the wall on the other side, on the ground of the obstruction of his navigation and of danger to his property, without at least proving that there had been any interference with the flow of the water, or of such injury to his right as would support an action. (P. C.) 3 P. C. R. 656 (L. R. 6 I. A. 190).

2. Held that the defendants, lower riparian proprietors, who had by blocking up the stream, obstructed the plaintiff's right, as superior riparian proprietor, to have the drainage water from his lands permitted to flow off in the usual course, could only justify their act if they had acquired an easement to it; that their act was actionable whether special damage had or had not accrued; and that so long as the obstruction was continued, there was a continual cause of action from day to day. I. L. R. 1 Mad. 335.

3. R (represented by plaintiff in this suit) and defendant's predecessor were adjoining lessees deriving title from

RIGHT TO WATER (*continued*).

Government. In 1865 R took a lease from Government for 999 years to enure from 1860. Defendant's predecessor obtained a similar lease from Government to enure from 1869. In 1864 R opened an artificial channel for the conveyance of water for the use of his estate. This channel was taken off from a ravine in Government waste land, and before reaching the plaintiff's estate passed through the land which in 1864 belonged to Government, but which subsequently formed portion of the defendant's estate. When the lease, under which the defendant claimed, was made in 1874, the flow of water through the channel, was enjoyed by the plaintiff. The plaintiff sued to restrain the defendant from interfering with and diverting the flow of water in this channel and for damages: *Held* that the flow of water in the channel having existed as an apparent and continuous easement in fact at the time of the execution of the lease in 1865, a right to it passed by implication under that lease, and that the plaintiff was accordingly entitled to it; that the defendant, whose lease was subject to that right, was not entitled to interrupt the flow; but that he might use the water in a reasonable manner as it flowed through his land. I. L. R. 2 Mad. 47.

See Limitation 41.
,, (Act IX of 1871) 5, 36.
Res Judicata 38.
Watercourse 1, 2, 3.

Rioting.

1. The offences of — and causing hurt are distinct offences and are separately punishable under ss. 147 and 323 Penal Code. (Cr.) I. L. R. 2 All. 139.

See Culpable Homicide not amounting to Murder 2.
High Court 29, 33.
Witness 5.

Riparian Proprietor.

See Churs.
Limitation (Act IX of 1871) 36.
Right to Water 1, 2.

River.

See Churs.
Criminal Trespass 1.
Ganges (River).
Gunduck ,,
Julkur 6, 7.
Public Spring or Reservoir 1.

Road.

1. There is nothing in this country which prevents the operation of the rule of law, that where a — has been for many years the boundary between two properties, and there is no evidence that the owner of either property gave up the whole of the land necessary for it, the site of the — must be presumed to belong to the adjoining proprietors, half to one and half to the other, up to the middle of the —. I. L. R. 4 Cal. 206.

See Arrest 4.
Right of Way 1.
Road Cess.

Road Cess.

1. The — imposed by Act X of 1871 (Bengal) cannot be considered to be a tax on income and cannot be set-off as income-tax. I. L. R. 4 Cal. 576.

2. Although the above Act contains no saving clause in favor of contracts, it does not prohibit in future the making of contracts which shall interfere with the incidence of the — as directed by the Act, nor vacate contracts that may have been made before the passing of the Act. In the absence of any provisions to that effect, an agreement entered into before the passing of the Act cannot be affected by the subsequent passing of the Act. *Ib.*

See Small Cause Court 23.

Robbery.

See Plunder.
Railway 7.

Rules of Practice.

1. Rules of 22nd June 1875 (Cal.) *See* Will. 20.
2. Rules of 3rd August 1866 (Bom.) *See* Joint Stock Company 8.
3. Common Law Rules of Supreme Court (Bom.) *See* Limitation (Act IX of 1871) 25.
4. Rules of Court of 1866 (Mad.) *See* High Court 19.
5. Durkhast Rules of Revenue Authorities (Mad.) *See* Meerasee 6.
6. Rule of Court (N. W. P.) *See* Limitation 43; Limitation (Act IX of 1871) 39.

Rule Nisi.

1. When a Magistrate wishes to show cause against a — issued by the High Court, the proper course for him to adopt is to apply to the Legal Remembrancer to cause an appearance to be made for him in Court, and not to address the Registrar by letter. (Cr.) I. L. R. 4 Cal. 20.

See Bond 4.
Limitation (Act IX of 1871) 25.
Pension 4.

Ryotwaree Tenure.

1. *Quære* whether a transfer of a — can be effected without the consent of the zemindar or talookdar, as the case may be, the immediate successor in estate. (P. C.) 2 P. C. R. 300 (13 W. R. P. C. 18; 13 Moo. 270).

Sale.

1. At a — of the confiscated property of rebels to the highest bidder, the Government cannot, subsequent to the bid and the deposit of the earnest-money, impose any conditions not contained in the original notice of —, but is bound to make over possession to the highest bidder, whatever his character may be. The Government, in selling as aforesaid, does not perform an Act of State, but stands in the situation of an individual selling his property by auction, and is liable to be sued by the purchaser, if it refuses to give up or transfer possession. (P. C.) 2 P. C. R. 283 (13 W. R. P. C. 4).

2. Where a suit to set aside a — of immoveable property is brought after the death of all the parties who could have explained the transaction, the evidence must be looked at with great jealousy. (P. C.) 2 P. C. R. 543 (17 W. R. 259; 14 Moo. 433).

3. A — for arrears of rent under Regs. VII of 1799 and VIII of 1819 is not free from encumbrances created by the defaulter. (P. C.) 2 P. C. R. 554 (17 W. R. 197; 10 B. L. R. 139; 14 Moo. 330).

4. A private — or other alienation of property during the continuance of an attachment is void, under Act VIII of 1859 s. 240, only as against the attaching creditor and those who claimed under or through the attachment. (P. C.) 2 P. C. R. 559 (17 W. R. 313; 10 B. L. R. 184; 14 Moo. 543).

The effect of that section is not to render the payment of a debt which has been attached absolutely void under all circumstances and against every one, but merely to make it void so far as may be necessary to secure the

Sale (continued).

execution of the decree. The distinction between a private — in satisfaction of a decree and a — in execution of a decree, clearly explained. (P. C.) L. R. 8 I. A. 65.

5. *Semble*. In a suit for specific performance of an agreement to sell land, the fact that an account of the extraordinary character of the property, as its containing coal or other valuable minerals, there is considerable difficulty in fixing a reasonable rate for it, is not a sufficient reason for refusing a decree. (P. C.) 3 P. C. R. 737 (L. R. 7 I. A. 107; I. L. R. 5 Cal. 932). *See* 9 *post*.

6. A contracted with B to sell him 975 maunds of rice, the whole contents of a certain golah at Kallygunge (near which place B resided) at a certain rate. B paid to A certain earnest-money, and agreed to remove the whole of the rice, after weighing, on or before a certain date. B transferred his contract to C, who, through his servant, took delivery from A of 130 maunds, paying to A Rs. 1,000, but subsequently refused to take delivery of the residue, as he alleged it to be of inferior quality to that contracted for. The golah was accidentally burnt, and the residue of the rice destroyed. In a suit by A to recover from B the balance of the purchase-money (after deducting the payments made) under the contract: *Held* that the — was complete, and the ownership, with the risk of loss in the rice sold, passed to B under Act IX of 1872 ss. 78 and 86, because the contract was for "ascertained goods" for which B had paid earnest-money and taken part delivery; and that it was not open to B to rescind the — on alleging and proving a breach of warranty on the part of A, unless he could bring the case within s. 19; but that he was precluded from so doing, because he might have discovered the inferiority of the quality of the rice by using "ordinary diligence." I. L. R. 4 Cal. 801.

7. On 16th April 1878 plaintiffs contracted to purchase from F. M. & Co. of Bombay at Rs. 18 per ton "the entire cargo of coal per *Culzean* amounting to 900 tons or thereabouts." On 18th April plaintiffs transferred the contract to the defendants and one N B, and the following endorsement was made, "The contract to be transferred to Messrs. T & S and N B at Rs. 20½. For C H B F and selves, W. T. & Co." Underneath this endorsement the transferees wrote as follows, "Accepted 450 tons at Rs. 20½ per ton. N B. Accepted 450 tons at Rs. 20½ per ton. T & S." The *Culzean* arrived at Bombay with a cargo of 2,167 tons of coal on board, of which it appeared that 1,300 tons had been shipped to the B B & C I Ry. Co. and 867 tons to the order of the shippers. F. M. & Co. were agents at Bombay for the shippers. Defendants refused to take delivery of the coal, on the ground that the contract transferred to them and N B was a contract for an "entire cargo." Plaintiffs sued defendants for non-acceptance, contending that there had been no transfer to defendants and N B of the original contract, but a new several contract for separate portions of the cargo: *Held* that the joint effect of the endorsement and the original contract was that defendants agreed to purchase 450 tons, part of an entire cargo of 900 tons or thereabouts; that, inasmuch as the cargo of the *Culzean* consisted of 2,167 tons, defendants were not bound to accept any part of such cargo; and that the suit was not maintainable. (O. J.) I. L. R. 3 Bom. 386.

8. There is nothing in Act IX of 1872 ss. 23 and 24 to support the opinion that a —, made with the view of defeating a probable execution, is a — with a fraudulent and unlawful object, and therefore void within the meaning of those sections. I. L. R. 4 Bom. 70.

9. Where a contract is made to sell land at a fair valuation, and there is no difficulty in ascertaining what a fair valuation would be, the Court will take the usual means of ascertaining it, and decree performance of the contract accordingly. But when, having regard to the peculiar character of the property, as in the case of land supposed to contain coal or valuable minerals, the value of the land must be to a great extent a matter of guess and speculation, the Court will not decree specific performance, as it has no means of ascertaining by the ordinary method what price the plaintiff should pay. I. L. R. 5 Cal. 175. *See* 5 *ante*.

10. Commission sale. *See* Insolvency 4.

11. In a contract for the — of ascertained goods, terms cash on delivery, to be given and taken in ten or eleven days, the vendee obtained an extension of the time for the performance of the contract, agreeing to pay godown rent and interest. He took delivery of, and paid for, some of the goods, and subsequently obtained a further extension of time. A small balance remained in the vendors' hands after giving the vendee credit for the goods taken delivery of, godown rent, and interest. After the expiration of the further time, the vendee tendered the price of the remaining goods and demanded delivery, when the vendors stated that they had rescinded the contract. In an action for damages for non-delivery: *Held* that time was of the essence of the contract; and that, under Act IX of 1872 s. 55, the vendors were entitled to rescind. (O. J.) I. L. R. 6 Cal. 64.

12. Distinction between private — and sale by public auction. *See* Co-Sharers 15. *See ante* 4.

See Ancestral Property 1.
Attorney and Client 1.
Benamee 1, 2, 4, 5, 6, 7.
Conditional Sale.
Consent 1.
Contract 27.
Co-Sharers 14, 15.
Cotton Frauds (Bombay) 1.
Debtor and Creditor 2.
Deed of Sale.
Guardian and Minor 3, 10, 11, 17, 22.
Hindoo Law (Alienation) 1.
,, Widow.
Husband and Wife 1, 2.
Lease 5.
Limitation 2.
Mortgage 19, 31, 32, 37, 46, 61, 62, 77, 78, 99, 100, 101, 108, 111.
Power of Sale.
Putnee 1, 2, 4, 5, 6, 7, 11.
Registration 1.
Right of Occupancy 9.
Sale (for Arrears of Revenue).
,, (in Execution of Decree).
,, of Goods.
Securities (Government) 1, 2.
Service Tenure 9.
Sheriff 1, 2, 3.
Small Cause Court 23.
Stolen Property 1.
Trust 5, 7.
Vendor and Purchaser.
Will 31.

Sale (for Arrears of Revenue).

1. Where an estate or a share in an estate, not severed for the purpose of revenue, is under attachment by order of a Civil Court in execution of a decree, such estate or share cannot, under Act XI of 1859 s. 5, be put up to —, without the notification required by that Section. (P. C.) L. R. 1 I. A. 89 (12 B. L. R. 297).

2. The words "arrears of estates under attachment" in the above Section are not confined to estates the whole of which is under attachment. (P. C.) *Ib.*

3. Respondents bought appellant's interest in the surplus proceeds of a — subject to the contingency of his succeeding in his suit to set aside the —, in which event that interest would be *nil*: *Held* that there was no general equity existing between the parties upon which appellant ought to be compelled to restore to respondents their original position, because the event on which they speculated had gone against them; and that the doctrine of Courts of Equity that a plaintiff who comes to be relieved from his own act must submit to the equitable conditions which the Court may see fit to impose, was held inapplicable to the case of appellant, who was not seeking the aid of the Court, but was himself sued for money paid

SALE (FOR ARREARS OF REVENUE) (*continued*).

under no contract or consent of his but under proceedings taken *in invitum*. (P. C.) 3 P. C. R. 135 (23 W. R. 305; 15 B. L. R. 208; L. R. 2 I. A. 131). *See also* I. L. R. 4 Cal. 807.

4. No suit for damages as between joint owners of undivided estates will lie in consequence of the — of the whole estate through the default of one or more of such owners in paying their shares of the Government revenue. 25 W. R. 150 (I. L. R. 1 Cal. 406).

5. When one of several co-sharers fraudulently contrived to have an estate brought to — under Act XI of 1859, and purchased it in the *benamee* of his son: *Held* that another co-sharer aggrieved by the sale could maintain a suit to have the property reconveyed, though the period limited by s. 33 of that Act and Act IX of 1871 sch. 2 art. 14, for a suit to set aside the sale, had expired. I. L. R. 3 Cal. 300.

6. A in November 1862 purchased a portion of an estate sold in execution of a decree against the then proprietor. This sale was not confirmed till 9th February 1863. Default occurred in the payment of the Government revenue in January 1863, and the entire estate was put up for sale by the Collector, and purchased by A on 29th March 1863: *Held* that A, at the time of his second purchase, was an unrecorded co-partner of an estate within the meaning of Act XI of 1853 s. 53, and therefore took the entire estate subject to all the incumbrances existing at the time of the Government —. I. L. R. 4 Cal. 607.

See Auction-Purchaser (Revenue Sale).
Hindoo Law (Coparcenary) 5.
Julkur 1.
Jurisdiction 39.
Limitation 9, 15.
Meerasee 5.
Mortgage 3.
Sheriff 7.
Under Tenure 2.

Sale (in Execution of Decree).

1. A claim under a future award of arbitration, as to which it is wholly uncertain, until the award be made, to what the debtor is entitled, is not liable to attachment and — under Act VIII of 1859 s. 205. (P. C.) 2 P. C. R. 434 (7 B. L. R. 186; 14 Moo. 40).

2. Certain lands belonging to the judgment-debtor were put up to — and purchased by the decree-holder from whom security was required for the proceeds of sale. Some time elapsed before she could obtain security, and meanwhile the lands were attached and put up to — of another creditor and purchased by him, and possession was given to him: *Held* that the first decree-holder's omission to give security could not affect her title by the previous —, and that the order for the second — was an error. (P. C.) 2 P. C. R. 560 (17 W. R. 289; 10 B. L. R. 214; 14 Moo. 529).

3. Appellant brought a suit under Act X of 1859 for rent due by a deceased person against his widow as widow and guardian of her infant son, and obtained a decree against the widow only as sole heiress and representative on the ground that the son having been adopted into another family was not the heir of his father. He then brought a suit in the Civil Court and obtained a decree declaring that the son was heir: *Held* that the estate was sold in execution for the debts of the deceased, and that the interest of his widow as well as of his son (if any) was bound by that decree. (P. C.) 2 P. C. R. 579 (17 W. R. 459; 14 Moo. 605; 10 B. L. R. 294). *See* 3 P. C. R. 685 (L. R. 6 I. A. 233).

4. The representative of a deceased judgment-debtor is a party to the suit within the meaning of Act XXIII of 1861 s. 11, and entitled to sue to set aside a —. (P. C.) 2 P. C. R. 680 (18 W. R. 185; 11 B. L. R. 149).

5. Where the proceeds of a — were not applied to satisfy only a liability incurred after the owner's death, but also decrees for other debts for which the ancestral estate was liable, no substantial ground was held to have been shown to impeach respondent's long title. (P. C.) 2 P. C. R. 863 (20 W. R. 30).

6. Inadequacy of price is in itself no ground for refusing to confirm a — according to Act VIII of 1859 s. 257. (P. C.) 3 P. C. R. 294 (26 W. R. 44; L. R. 3 I. A. 230).

7. Where a Lower Court, after rejecting the objections to a —, refuses to confirm it or to grant a certificate of confirmation, the High Court may, by a proceeding in the nature of a *mandamus*, order the Lower Court to do that which it ought to have done. (P. C.) *Ib.*

8. Under s. 249 the amount of Government revenue assessed upon the estate to be sold in execution of a decree should be stated correctly in the notification of sale. Specifying a lower amount may be an error, which, if the — is confirmed and the judgment-debtor can prove actual damage by the irregularity, would be a sufficient ground for setting aside the sale upon appeal. In the present case the judgment-debtor was held barred from objecting to the notification of sale on the ground of error, as it appeared that, in applying for a postponement of the —, he agreed to the attachment and the notification being maintained. (P. C.) *Ib.*

9. However nice may be the distinction between the rights of a purchaser under a voluntary conveyance and those of a purchaser at a —, it is clear that a distinction may, and in some cases does, exist. (P. C.) 3 P. C. R. 467 (L. R. 4 I. A. 247; I. L. R. 3 Cal. 198).

10. In attaching property of a judgment-debtor under Act VIII of 1859, the judgment-creditor can only attach and sell the right, title, and interest of the judgment-debtor; whereas if he sells the tenure under Act VIII of 1869 (Bengal), he would get rid of all under-tenures, and the purchaser be entitled to the whole tenure free from all incumbrances. (P. C.) 3 P. C. R. 577 (L. R. 6 I. A. 47).

11. Where the purchasers at a — on the 16th July 1850 bought, among other things, the right, title, and interest of the judgment-debtors in a decree of the 11th November 1843, and it appeared that the judgment-debtors had obtained from the Civil Court Ameen constructive possession (*i.e.* possession marked out by sticks and posts) of certain lands which, according to his view, they were entitled to under the decree of 11th November 1843: *Held* that what was sold at the — was the unexecuted portion only of the decree of 11th November 1843. (P. C.) 3 P. C. R. 776 (I. L. R. 6 Cal. 243).

12. B R, a Mahomedan, had incurred debts for repairs to a house of which he owned an 8-anna share, and after his death his daughter S, who was entitled to a 5-anna share of his estate, and who had taken charge of his property and obtained a certificate under Act XXVII of 1860, directed further repairs to be done to his estate. The debts then incurred by B R and S not having been paid, the creditor brought a suit against S, as representing her father's estate, to recover them, and having obtained a decree, the house was sold in execution thereof and purchased by H in May 1874. B R at his death left also a sister, who was entitled to a 3-anna share of his estate, but who had been for some years absent on a pilgrimage to Mecca. On her return, she in January 1874 sold her interest in the house to M. In a suit by M against S and H for possession of the share so purchased by him: *Held* that S did not represent the whole estate of B R, and the share purchased by the plaintiff did not pass under the — to H; the plaintiff therefore was entitled to recover. I. L. R. 2 Cal. 395.

13. The sale of a portion of a *bhag* or share in a Bhagdaree or Narvadaree village other than a recognised sub-division of such *bhag* or share, or of a building site appurtenant to it, is illegal under Act V of 1862 (Bombay) s. 3; and a judgment-creditor cannot, in execution of his decree, evade the law by describing his debtor's separate portion in the *bhag* as his "right, title, and interest in the whole *bhag*"; for under Act VIII of 1859 s. 213 the creditor is bound to specify the debtor's share or interest to the best of his belief, or so far as he has been able to ascertain the same. *Quære* if the sale of an undivided share in the *bhag* be lawful; but even if it be, the purchaser cannot insist upon the possession of any particular portion of the *bhag* as representing the share of his debtor. All he can do is to sue for partition. But *quære* if such partition could be made. I. L. R. 1 Bom. 601.

14. An appeal lies from an order passed on an application, under Act VIII of 1859 s. 254, to make a defaulting purchaser liable for the loss occasioned by a re-sale. (F. B.) I. L. R. 1 All. 181.

15. In this case it was held by the majority of the Court, with reference to Act VIII of 1859 s. 257, that a sale ought

SALE (IN EXECUTION OF DECREE) (*continued*).

not to be set aside, as the irregularity in applying for execution of decree did not prejudice the judgment-debtor. (F. B.) I. L. R. 1 All. 212.

16. The sale of a decree charging land for its satisfaction in the course of execution proceedings against the judgment-creditor is a sale of an interest in immoveable property, to which the provisions of Act VIII of 1859 relating to sales of immoveable property will apply. I. L. R. 1 All. 348.

17. A Moonsiff having cancelled a — against landed property on the sole objection of the judgment-debtor that the property realised a low price, and the Judge having dismissed the auction-purchaser's appeal from the said order on the ground that the Moonsiff had no authority to cancel the sale under the terms of Act VIII of 1859 s. 257, without some irregularity in conducting or publishing the sale being proved, and that the said order must therefore be taken to have passed under Act XXIII of 1861 s. 11, which admits of no appeal by the auction-purchaser who was no party to the execution proceeding: *Held* that such order passed by the Moonsiff was not a proceeding under Act XXIII of 1861 s. 11, but an order passed *ultra vires* under Act VIII of 1859 s. 257; and that a suit would lie for its cancelment, the finality of an order under ss. 256 and 257 depending on its compliance with the terms of those sections. I. L. R. 1 All. 374.

18. In the case of a sale by the Civil Court of forest land which formed a grant from Government under a deed describing the property as a "Khalisa mehal" subject to the payment of revenue for a term of years, the sale not having been proclaimed at the site of the grant: *Held* that the sale was invalid by reason of irregularity in the publication, and because it was not competent to the Civil Court to sell land chargeable with, although not actually paying revenue at the time of sale, such Khalisa mehals being revenue-paying lands within the meaning of Act VIII of 1859 s. 248 and Act XIX of 1873 s. 3 cl. 1, and that therefore the sale should have been held by the Collector. I. L. R. 1 All. 400.

19. Where a — is postponed, whether indefinitely or to a fixed date, it is necessary, in the absence of an express arrangement between all the parties, that a fresh proclamation (according to Act VIII of 1859 s. 249) should be made giving notice of the day to which the sale has been postponed. It may be presumed, when the notice is wanting, that there has been an absence of bidders, from which alone substantial injury must probably have arisen to the judgment-debtor. I. L. R. 3 Cal. 542.

20. The property of a judgment-debtor was proclaimed and advertized for — on a certain day. The proclamation set out particulars of the property, but subsequently to such proclamation a portion of the property was released to a third party. Notwithstanding this fact, no fresh proclamation was made, and the sale took place on the day originally fixed: *Held* that the omission to issue a fresh proclamation (according to Act VIII of 1859 s. 249) was a material irregularity, inasmuch as the judgment-debtor was entitled to have a proclamation issued accurately describing the property to be sold, and that such proclamation should be published thirty days before the sale. I. L. R. 3 Cal. 544.

21. There is no provision in Act X of 1877, similar to that contained in Act VIII of 1859 s. 269, which enabled the Court executing a decree to enquire into a complaint made by a person other than the defendant, on the ground of dispossession in the delivery of possession to the purchaser of immoveable property at a —; and therefore the remedy of a person so dispossessed is by regular suit. I. L. R. 3 Cal. 729.

22. A, a decree-holder, purchased certain property belonging to B, his judgment-debtor, at a sale in execution of his decree, and delivery of possession to him was ordered. A stranger to the suit, thereupon, presented a petition to the Court executing the decree, setting up a title to a moiety of the property in question, and prayed for an investigation into his right, and for recovery of possession on the ground that he had been dispossessed by A: *Held* that the application could not be maintained. *Ib.*

23. Plaintiff's title to certain land in dispute was derived from the purchaser at a —, which decree was reversed in appeal subsequently to the sale, but before it had been confirmed: *Held* that the Court, which had made the decree, ceased, from the moment of the reversal, to have jurisdiction to take any further steps to execute the decree. Though the Court, when it confirmed the sale, was probably not informed that its decree had been reversed, and the purchaser was probably ignorant of it, yet the act of the Court in completing the sale was none the less without jurisdiction, and, being without jurisdiction, could confer no title. I. L. R. 2 Bom. 540.

24. If a decree be reversed after a sale under it has become absolute, and a certificate has been granted to the purchaser, the title of the purchaser is not affected by the reversal of the decree. *Ib.*

25. A purchaser is bound to satisfy himself as to the jurisdiction of a Court to order a sale, and this obligation continues until the sale is completed. Before he applies to the Court to confirm the sale and grant him a certificate, the purchaser ought to ascertain that the decree, under which the sale was ordered, is still in existence. *Ib.*

26. Where property has been sold under a decree, and the purchaser at the execution-sale has made default in paying the purchase-money, the remedy of the judgment-creditor is not limited by Act VIII of 1859 s. 254 to a suit against the defaulting purchaser. He is entitled to recover the balance of his debt from his judgment-debtor, who may perhaps have his remedy against the defaulting purchaser. I. L. R. 2 Bom. 562.

27. Certain immoveable property was attached on 13th April 1876 in execution of two decrees, *viz.*, M's dated 15th January 1876 which declared a lien created by a bond dated 17th July 1873, and P's dated 21st January 1876 which declared a lien created by a bond dated 28th September 1875. M had another decree dated 11th November 1875 declaring a lien on the same property created by a bond dated 27th October 1874. On 2nd June 1876, before the sale of the property, M applied for the attachment in the execution of that decree of the surplus remaining from the sale-proceeds after his claim under the decree dated 15th January 1876 was satisfied in full; and the Court made an order in accordance with his application: *Held* that, under such circumstances, M, as the holder of the decree dated 11th November 1875, was entitled to share in the surplus sale-proceeds under Act VIII of 1859 s. 271, and further was entitled to share before P. I. L. R. 1 All. 727.

28. The purport of Act VIII of 1859 ss. 270 and 271 (corresponding with Act X of 1877 s. 295) is not to alter or limit the rights of parties arising out of a contract, but simply to determine questions between rival decree-holders standing on the same footing, and in respect of whom there is no rule for otherwise determining the mode in which proceeds of property brought to — shall be distributed. I. L. R. 4 Cal. 29.

29. The right, title, and interest of A in a certain under-tenure was brought to a — for rent obtained against him by B, and purchased by B himself. B at the time held another decree against A for arrears of rent for the same under-tenure. C, to whom A had previously mortgaged the under-tenure, thereupon having foreclosed the mortgage, instituted a suit for possession against A and B, and obtained a decree for possession. After this decree, but before C got actual possession, B caused the under-tenure to be sold in execution of his other decree against A, and again became himself the purchaser. C having shortly afterwards obtained possession under his decree was dispossessed by B, who took possession through the Court under his second purchase. C thereupon instituted proceedings under Act VIII of 1859 s. 269, in which he was successful, and consequently regained possession. In a suit brought by B to set aside these proceedings, and for adjudication of title: *Held* that B had a good title to the under-tenure, and that he was not bound before bringing the under-tenure to sale under his second decree, to give notice to C. I. L. R. 4 Cal. 438.

30. In 1854 A R executed a bond in favor of K by way of security for a loan, and in a suit against A (the widow of A R), K obtained a decree on the bond on the 24th December 1859, in execution of which a share in a julkur, which had belonged to A R, was put up for sale and purchased by K. At the time of sale the property sold was in the possession of A, on behalf of the two sons of herself and A R who were minors. On the death of the two minor sons, unmarried and without issue, A took possession of the

Sale (in Execution of Decree) (*continued*).

property as their heir. In the decree of the 24th December 1859 A was described as widow of A R, and mother of the two minor sons. Neither the sale-proclamation nor certificate of sale was produced but a perwana from the Moonsiff to the Nazir was put in evidence, which referred to the sale-proclamation, and in which the parties were described merely as "decree-holder" and "judgment-debtor;" this perwana also contained a schedule of the property intended to be sold, in which the interest was described as the "right and possession of the debtor" in the share of the julkur. In a suit brought by the representatives of K to obtain possession of the property purchased by K at the sale in execution of his decree: *Held* that K did not, by his purchase, acquire the interest of the minor sons in the property sold, and that the plaintiffs were, therefore, not entitled to succeed. I. L. R. 4 Cal. 677.

31. The doctrine (that where a person sells property of which he is not the owner, but of which he afterwards becomes the owner, he is bound to make good the sale to the purchaser out of his subsequently acquired interest) does not apply to a case where the sale was made through the Court at the instance of an execution-creditor, and was, therefore, compulsory. *Ib.*

32. The right, title, and interest of G in certain immoveable property were attached and notified for sale in the execution of a money-decree held by T; and also in the execution of a money-decree held by S and R. The same date was fixed for both sales. The officer conducting the sales first sold the property in execution of T's decree, and T purchased the property. He then sold the property in execution of the decree held by S and R, and K purchased the property. The Court executing the decree confirmed the sale to T, granting him a sale, and disallowing K's objection to the confirmation. It also confirmed the sale to K, ordering the purchase-money to be paid to S and R, and disallowing his objection to the confirmation; but it refused to grant K a sale-certificate on the ground that, as the sale of T had been confirmed and a sale-certificate granted to him, it could not give K possession of the property. K brought a suit against S and R to recover his purchase-money: *Held* (distinguishing this case from those in which it has been held that, when the right, title, and interest of a judgment-debtor in a particular property are sold, there is no warranty that he has any right, title, or interest, and therefore the auction-purchaser cannot recover his purchase-money if it turns out that the judgment-debtor had no interest in the property) that the rule of *caveat emptor* did not apply, and the suit was maintainable. I. L. R. 2 All. 107.

33. Act VIII of 1859 s. 257 applies only to applications made under s. 256. *Held* therefore that inasmuch as K objected to the confirmation of the sale to him on the ground, that the Court was not competent to confirm a sale which had by its previous order been nullified, and not on any of the grounds mentioned in s. 256, K was not precluded by s. 257 from maintaining his suit. *Ib.*

34. Where the Court executing two decrees made separate orders directing the sale on the same date of certain immoveable property in execution of such decrees, the officer conducting the sales was not bound to sell such property once for all in execution of both decrees, and his selling such property separately was therefore not an irregularity in the conduct of the sales. *Ib.*

35. At a — of an under tenure for arrears of rent under Act VIII of 1869 s. 66, the growing crops standing on the land passes to the auction-purchaser, except when it has been specially excepted by the notification of sale, or a custom to the contrary has been proved. I. L. R. 4 Cal. 814.

36. B B held one anna of a ten-anna share in a jumma which had been purchased by B L H, and had paid rent to the *kutkinadar* on such one-anna share, and had his name registered as owner of such one anna-share in the sherishta of the *kutkinadar*. The *kutkinadar* having afterwards brought a suit against B L H alone for arrears of rent of the entire ten annas, and having obtained a decree, and in execution of this decree put up to sale the entire ten-anna share: *Held* that as the sale-certificate related only to the share of B L H, B B's one-anna share did not pass under such sale. I. L. R. 4 Cal. 855.

37. Proceedings to execute a decree commenced when Act VIII of 1859 was in force; but property belonging to the judgment-debtor was sold in pursuance of those proceedings on 14th November 1877 after Act X of 1877 came into operation. Subsequently, at the instance of the applicant, the Court made an order setting aside the sale on the ground of irregularity: *Held* that this order was governed by Act VIII of 1859, and was, consequently, not subject to appeal. I. L. R. 3 Bom. 214.

38. Where immoveable property was sold in the execution of a decree under the provisions of Act VIII of 1859, and the auction-purchaser, having been subsequently deprived of such property on the ground that the judgment-debtor had no saleable interest in it, applied under Act X of 1877 s. 315 to the Court executing such decree for the return of the purchase-money: *Held* that the Court could entertain the application. I. L. R. 2 All. 299.

Dissented from in a subsequent case where it was held that Act X of 1877 s. 315 cannot have retrospective effect so as to apply to a sale which had taken place before the Act came into operation. I. L. R. 2 All. 780.

39. Where after a judgment-debtor has applied, under Act X of 1877 s. 311, to have a sale set aside, the auction-purchaser is made a party to the proceedings, and the sale is set aside, the auction-purchaser can appeal against the order setting aside the sale. I. L. R. 2 All. 352. *See also* 41 *post*.

40. Act X of 1877 s. 266 proviso (*c*) does not prohibit the — of property specifically mortgaged, albeit the property be materials of a house belonging to or occupied by an agriculturist. I. L. R. 4 Bom. 25.

41. Although the auction-purchaser may not apply under Act X of 1877 s. 311 to have a sale set aside, he may be a party to the proceedings after an application has been made under that section, and then, if an order is made against him, he can appeal from such order under s. 588 (*m*). I. L. R. 2 All. 396. *See also* 39 *ante*.

42. An application made on the day of sale by the judgment-debtor that a part only of his property may be sold instead of the entirety, cannot be considered such a "consent" as, by virtue of Act X of 1877 s. 290, would do away with the necessity of a proclamation for sale being issued thirty days before the day fixed for sale. I. L. R. 5 Cal. 259.

43. Where successive postponements of the day of sale have been made, but the last of these is made by the Court on its own motion, without any application for postponement of sale being made on the part of the judgment-debtor (although such postponement might be for his benefit), a strict compliance with the rule that thirty days must elapse between the proclamation and the actual day of sale is requisite. *Ib.*

44. Plaintiff sued to recover possession of a house purchased by him at a — for Rs. 350. The plaint was filed on 31st March 1873. No certificate of sale was filed with it; but plaintiff subsequently produced one dated 8th July 1873, and the Court admitted it in evidence. Defendant submitted that the suit should be dismissed, as no certificate was produced, by the plaintiff with the plaint: *Held* that the plaintiff had no right of action, as he had no registered certificate of sale at the date of the institution of the suit. I. L. R. 4 Bom. 155.

45. The holder of a decree, in execution of which property is sold, is absolutely bound under Act X of 1877 s. 294 to have express permission from the Court before he can purchase the property; and whether this objection is taken and pressed or otherwise, a sale to him is invalid, unless he has got explicit permission. The use, at a sale, of language by an intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property is a "material irregularity," sufficient to render the sale invalid under s. 311 of the same Act. I. L. R. 5 Cal. 308.

46. By Act X of 1877 s. 266 cl. (*c*) an ordinary judgment-creditor is precluded from attaching or selling the materials of a house or other building belonging to his judgment-debtor, but, by explanation (*a*) of the same section, this prohibition does not extend to a creditor whose decree is for rent. I. L. R. 4 Bom. 429.

47. *Held* that ss. 266 and 295 must be read together, and that an ordinary judgment-creditor is not entitled, under s. 295, to a rateable proportion of the assets realized by the sale of such house or building, under a decree obtained by

Sale (in Execution of Decree) (*continued*).

another creditor for rent due to him in respect of the said house or building. *Ib.*

48. One Maniklal obtained a decree against L and M for rent due from them, and in execution thereof, applied for the attachment and sale of two houses, with their compounds and the ground underneath them (in respect of which property the said rent had fallen due), belonging, respectively, one to each of his judgment-debtors. The properties were, accordingly, sold on 23rd July 1879, and the sale proceeds handed over to Maniklal. In the meantime, on 18th February 1879, D, a judgment-creditor of M under a money-decree, applied for the attachment and sale of the same immoveable property (excepting the houses) of his judgment-debtor which had been previously attached under Maniklal's decree for rent. On the realization of the sale proceeds, D applied, under Act X of 1877 s. 295, for a rateable proportion of the assets realized by the sale of M's property in execution of Maniklal's decree: *Held* that D was not entitled to such rateable proportion of the assets. *Ib.*

49. On the day fixed for the — of certain immoveable property, the Court made an order postponing the sale, but the sale had been effected before such order reached the officer conducting it. The Court, no application having been made to set aside the sale, passed an order confirming it. Subsequently an application by the decree-holder for a review of this order having been granted, the Court passed an order setting the sale aside as illegal: *Held* that the sanction to the sale originally given having been withdrawn, the sale could not legally be held, and that the sale which was effected, the order of postponement notwithstanding, was unlawful and invalid, and in reviewing its first order and in setting aside the sale as illegal the Court executing the decree had not acted *ultra vires* and its action was not otherwise illegal. I. L. R. 2 All. 686.

50. Certain moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-debtor obtained decrees against him in the Court of the Subordinate Judge at the same place, and applied to it for the attachment of the same property in execution of their decrees. The Subordinate Judge, accordingly, attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees, obtained in the Subordinate Judge's Courts, claimed a rateable share in the assets realized by the Small Cause Court, under Act X of 1877 s. 295: *Held* that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court. I. L. R. 4 Bom. 472.

51. Where a — was set aside, not in favor of the judgment-debtor on the ground of want of jurisdiction or other illegality or irregularity affecting the sale, but in favor of a third party who had established his title to the property, and there was no question of fraud or misrepresentation on the part of the decree-holder: *Held* that a suit by the auction-purchaser against the decree-holder, to recover the purchase-money on the ground of failure of consideration, was not maintainable. I. L. R. 2 All. 780.

52. On 25th June 1879 a Subordinate Judge made an order setting aside the sale of immoveable property in execution of a decree from which an appeal was preferred, under Act X of 1877, to the District Court on 25th July 1879 before Act XII of 1879 came into force: *Held* that, as the appeal would not have lain at all had Act XII of 1879 been in force on the date of its institution, s. 102 of that Act did not apply; but as the appeal lay to the District Court under the law in force on that date, it was competent to dispose of it under Act I of 1868 s. 6. I. L. R. 2 All. 785.

53. In a — of the rights and interests of a judgment-debtor in an estate of which he is the recorded proprietor in the revenue registers, it is usual to describe such rights and interests in the sale-proceedings as recorded in such registers, but such description does not amount on the part of the decree-holder or the officer conducting the sale to a warranty that such rights and interests are correctly described. I. L. R. 2 All. 828.

54. Where, therefore, according to the usual practice, the rights and interests of a judgment-debtor in a share of a village of which he was the recorded proprietor in the revenue registers, were proclaimed for sale in the execution of a decree and sold, described as recorded, and the sons of the judgment-debtor subsequently sued the auction-purchaser to recover their interests in such share and obtained a decree for such interests, and the auction-purchaser thereupon sued the decree-holder for a refund of the purchase-money proportionate to such interests and for the costs of defending such suit: *Held*, there being no fraud or misrepresentation on the part of the decree-holder, or any thing of an exceptional nature showing an express or implied warranty on his part, that the suit was not maintainable. *Ib.*

55. Act X of 1877 s. 326 does not apply to a decree which directs the sale of land or of a share in land in pursuance of a contract specifically affecting the same. The Court, therefore, cannot authorize the Collector to stay the sale in such a case under s. 326. I. L. R. 2 All. 856.

56. Distinction between a private sale in satisfaction of a decree and a —. *See* Sale 4.

See Ancestral Property 1, 2, 3.
Assignment 3.
Attachment 1, 2, 17, 19.
Auction-Purchaser (Execution-Sale).
Benamee 12.
Contribution 1.
Deccan Agriculturists Relief 5.
Deposit 1, 2.
Endowment 27.
Execution of Decree 2, 36, 39.
Gift 15.
Guardian and Minor 15, 32.
Hindoo Law (Coparcenary) 7.
" Widow 16.
Husband and Wife 11.
Instalments 4.
Jurisdiction 57.
Landlord and Tenant 4.
Limitation 2.
" (Act IX of 1871) 2, 12, 46, 77, 82.
" (Act XV of 1877) 9, 10, 23.
Lis Pendens 1.
Maintenance 10.
Mesne Profits 7.
Mortgage 30, 40, 46, 69, 71, 78, 79, 80, 86, 87, 98, 103, 105, 107, 111, 116, 117, 118, 119, 127, 128, 129, 130, 131, 132, 133.
Partition (Butwarra) 1.
Practice (Review) 4.
Pre-emption 16.
Principal and Agent 4.
" " Surety 3, 4.
Putnee 13, 15.
Puttee 2, 3, 4, 5.
Receiver 1, 2.
Registration 17, 47, 51.
Res Judicata 19, 31.
Right of Occupancy 3, 4, 9.
Sheriff, 1, 2, 3, 4, 5, 6.
Small Cause Court 5, 15, 32.
Under Tenure 3.
Will 49.

Sale of Goods.

See Arbitration 23.
Deccan Agriculturists Relief 9.
Sale 6, 7, 11.
Set-Off 2.
Vendor and Purchaser 9.

Salt.

1. The collecting of — earth from — swamps, or the being in possession of — earth for the purpose of making — is not an offence within the meaning of Reg. I of 1805 (Madras) s. 18. (Cr.) I. L. R. 1 Mad. 278.

See Contract 19.

Salvage.

See Lien 2.

Samanodaka.

See Hindoo Law (Inheritance and Succession) 19.

San Mortgage.

See Mortgage 6, 7.

Sapinda.

See Hindoo Law (Adoption) 2, 43.
" (Inheritance and Succession) 2, 19, 46, 50.
Hindoo Widow 24, 56.

Saranjam.

See Pension 3.

Sarun.

See Churs 18.

School.

See Education.

Scotchman.

See Court Fees 9.
Will 45.

Screening Offender.

1. K and B, having caused the death of J in a field belonging to B, removed J's dead body from that field to his own field with the intention of screening themselves from punishment. K was convicted on these facts of an offence under s. 201 Penal Code: *Held* that that section referred to persons other than the actual offenders, and K could not therefore properly be punished under that section for what he had done to screen himself from punishment. Also that as a matter of fact, he did not by removing J's corpse from one field to another cause any evidence of J's murder, which that corpse afforded, to disappear, and his act, although his object may have been to divert suspicion from himself and B, did not constitute the offence defined in that section. I. L. R. 2 All. 713.

Sea.

See Customs.
Julkur 5.
Jurisdiction 35.
Reclaimed Land 1.
Transshipment 1.

Seal.

See Bond 3.
Mokurruree 6.
Mortgage 8.

See Municipal 15.
Practice (Suit) 9.
Securities (Government) 1.
Stamp Duty 14.

Securities (Government).

1. A purchaser, however *bonâ fide*, of — transferred to him by endorsement purporting to bear the seal of a native lady of rank to whom the — were made payable, but which seal was put on after her death, can gain no title by such unauthorized use of the seal.—(P. C.) 3 P. C. R. 175.

2. A plaintiff, who was aware of the sale of the — under the above circumstances by his brother, may be presumed (even in the absence of direct proof) to have acquiesced in what was done by his brother in the disposal of the —, and therefore is, equally with him, precluded from impeaching the sale. (P. C.) *Ib.*

See Bailment 4.
Endowment 16, 17.
Gift 2.
Husband and Wife 1.
Stolen Property 2, 3, 4.
Will 61.

Security.

1. On a requisition from the High Court, the Magistrate is bound to state the grounds upon which he fixes the amount of —. (Cr.) I. L. R. 2 Cal. 384.

2. A person from whom — for good behaviour is demanded, should have a fair chance afforded him to comply with the required conditions of —. (Cr.) *Ib.*

3. The order requiring — for good behaviour should not form part of the sentence for dishonestly receiving stolen property. A proceeding should be drawn out representing that the Magistrate is satisfied, from the evidence as to general character adduced before him in the case, that the prisoner is by repute an offender within the terms of Act X of 1872 s. 505, and therefore — will be required from him, and an order should be recorded to the effect that, on the expiry of the imprisonment, the prisoner be brought up for the purpose of being bound. I. L. R. 1 All. 666.

4. The words in Act X of 1872 s. 489 "taking other unlawful measures with the evident intention of committing a breach of the peace," do not include the offence of intimidation by threatening to bring false charges. Where therefore a person was convicted under ss. 503 and 506 Penal Code of such offence: *Held* that the Magistrate by whom such person was convicted could not, under Act X of 1872 s. 489, require him to give a personal recognizance for keeping the peace. (Cr.) I. L. R. 2 All. 351.

5. Collateral security. *See* Registration 53; Bond 5, 6; Mortgage 117; Limitation (Act XV of 1877) 7.

6. Act X of 1872 s. 506 solely relates to the calling upon persons of habitually dishonest lives, and in that sense "desperate and dangerous," to find — for good behaviour, as a protection to the public against a repetition of crimes by them in which the safety of property is menaced and not the — of the person alone is jeopardised. (Cr.) I. L. R. 2 All. 835.

7. Where, therefore, the evidence adduced before the Magistrate did not show that a person was "by habit a robber, house-breaker, or thief, or a receiver of stolen property, knowing the same to have been stolen," but showed only that he had been guilty of acts of violence: *Held* that the Magistrate could not under Act X of 1872 s. 506, order such person to furnish —. (Cr.) *Ib.*

8. Observations regarding the evidence on which the procedure of s. 506 should be enforced. (Cr.) *Ib.*

9. The powers given by Act X of 1872 ss. 505 and 506 should be exercised with extreme discretion; the former of these sections is not intended to apply to persons of "by no means a reputable character." (Cr.) I. L. R. 6 Cal. 14.

10. An order requiring persons to deposit cash in lieu of entering into a bond as — for their future good behaviour is bad in law. (Cr.) *Ib.*

See Certificate 1.

SECURITY (*continued*).

See Conditional Sale 2.
Deposit 1.
Divorce 12, 18.
Evidence 7.
Guarantee.
Hoondee 4.
Insolvency 2, 4.
Practice (Appeal) 15.
Principal and Surety 6.
Privy Council 36.
Recognizance.
Registration 19, 21, 27.
Religious or Charitable Trusts 1.
Residence 3.
Sale (in Execution of Decree) 2.
Securities (Government).
Small Cause Court 5.

Self-Acquired Property.

1. Under the Mithila law — can be given by its owner at his pleasure. The Mitacshara law requires the son's consent; but the fact of the son being in debt does not incapacitate him from consenting. (P. C.) 2 P. C. R. 878 (20 W. R. 137 ; 12 B. L. R. 430).

See Arbitration 20.
Gift 11.
Hindoo Widow 45.
Karanavan 5.

Separate Property.

See Gift 12.
Guardian and Minor 10.
Hindoo Law (Adoption) 23.
,, (Coparcenary) 1, 10, 14.
,, (Inheritance and Succession) 7, 22, 25, 29.
Hindoo Widow 10.
Husband and Wife 5, 10, 11, 12.
Maintenance 3.
Oudh Estates 12.
Res Judicata 18.
Streedhun 3, 8.
Will 34.

Separation.

See Ancestral Property 1.
Hindoo Law (Coparcenary) 26.
,, (Inheritance and Succession) 36.
Husband and Wife 6.

Service.

1. In cases of substituted —, it is not sufficient to show that the notice has been attached to the door, unless the condition which renders such a mode of — good, *viz.* that the person who ought to be served is keeping out of the way, has been first established to the satisfaction of the Court. (P. C.) 2 P. C. R. 836 (19 W. R. 353; 12 B. L. R. 229). *See also* 22 W. R. 482, 24 W. R. 381.

2. Where substituted — of summons is ordered under Act X of 1877 s. 82, a sufficient time ought, under s. 84, to be given for notice of the fact to reach the defendant wherever he may be : and if an *ex-parte* decree be obtained by the plaintiff, the Court, on being satisfied that the time fixed was insufficient, will set aside the decree. (O. J.) I. L. R. 2 Bom. 449.

3. To satisfy the conditions of Act X of 1877 s. 76 as to — of summons on an agent, there must be a person residing without the local jurisdiction, but carrying on business or work within those limits by a manager or agent, and sued on account of such work, *i.e.* business either actually itself carried on by the agent or manager, or forming part of the business in the sense of a connected course of transactions to the management of which he has been duly appointed. (O. J.) I. L. R. 4 Bom. 416.

4. Ss. 76 and 37 cl. (*c*) are to be construed together, and are intended to carry out the same scheme of relief, which rests upon the idea that, where an agent has been put forward substantially to take the place of his principal within a particular jurisdiction, he should take the place of such principal (at the option of any person who has dealt with him) in any legal proceedings that may arise out of the business or work in which the agent has been virtually a local principal. (O. J.) *Ib.*

5. Thus where a firm which carried on business at Agra, and had no place of business in Bombay, employed G as its agent in Bombay in certain dealings which it had with the plaintiff. The letters and telegrams of the firm to G were sent to the plaintiff's place of business, or addressed to G as an individual and not in the name of the firm ; nor did G himself initiate any business or in any way stand between the firm and the plaintiff : *Held* that G was not the manager or agent of the firm, within the meaning of s. 76, upon whom summons could be served in an action against the firm. (O. J.) *Ib.*

6. G in particular instances drew *hoondees* on the firm which the firm duly accepted and paid : *Held* that he might reasonably be deemed the agent or manager of the firm for this particular kind of business, if for no other, and — on him would probably suffice in the case of a plaintiff suing on hoondee transactions as with the firm through him. (O. J.) *Ib.*

7. — unduly made under s. 76 does not become effectual by reason of the fact of such — being subsequently notified to the parties really interested as defendants. *Semble.* — duly effected under s. 76 is effectual without reference to the circumstance of its being or not being communicated to the real defendants. (O. J.) *Ib.*

See Contract of Service.
Enhancement 22.
Ex-Parte 7.
Mortgage 26, 27, 28, 41, 42.
Practice (Suit) 13, 23.
Putnee 7, 11.

Service Tenure.

1. Lands granted by Government before the Permanent Settlement as a hereditary *jagheer* tenure in consideration of services rendered to the Government in the repression of incursions of wild elephants upon the cultivated lands of the pergunnah, differ from the ordinary *chakeran* land contemplated by Reg. VIII of 1793 s. 41, and are liable to forfeiture only on wilful failure to perform that duty, but not to resumption because the occasion for the service no longer exists.—(P. C.) 2 P. C. R. 358 (14 W. R. P. C. 28 ; 5 B. L. R. 529 ; 13 Moo. 438).

2. The above principle was applied to a case where *ghatwalee* services ceased to be necessary. (P. C.) 2 P. C. R. 491 (14 Moo. 247 ; 11 B. L. R. 71). *See also* 2 P. C. R. 818 (13 B. L. R. 124 ; L. R. I. A. Sup. 181).

3. If the auction-purchaser, who has acquired the rights of the zemindar, has any right at all to destroy the tenure, it must be by virtue of Reg. VIII of 1793 s. 41 relating to *chakeran* or service land. (P. C.) *Ib.*

4. Where a sunnud granted to the holder of a *jagheer* was only a confirmation by the Government and the Rajah of the tenure under which the jagheer was held, and authorized the jagheerdar to remain in possession and in the performance of the services with his brothers, without describing the kind of service : *Held* that the Rajah could not resume the land without proof that the services to be performed by the jagheerdar were personal services only to the Rajah. (P. C.) 2 P. C. R. 713 (18 W. R. 321).

5. Where the original donee of a — ceases to do any service and pays in lieu a rent which his descendants

SERVICE TENURE (*continued*).

continue to pay, the condition of the tenure becomes altered from service to rent. (P. C.) 2 P. C. R. 802 (19 W. R. 211).

6. A distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment. I. L. R. 4 Cal. 67.

7. *Semble*. No rights of occupancy accrue in lands held under a —. *Ib.*

8. Where a jagheer is held by a person subject either to the appointment or approval of Government, and with an additional burden of public duty to the Government, such a jagheer cannot be attached and sold in satisfaction of the debts of the jagheerdar's predecessor in title, as land coming into his possession from the hands of the deceased jagheerdar, as the appointment and approval of the Government deprive the jagheer of the character of simple heritable property. I. L. R. 5 Cal. 389.

9. Where a tenure is held under services which are not private or personal to the zemindar, but are of a public nature, a proclamation issued for the sale of the tenure describing it as an ordinary rent-paying one and ignoring the important fact that the tenure is a service one, is bad, and is such a misdescription of the tenure as would vitiate a sale held under such a proclamation. *Ib.*

See Ghatwals.
Jurisdiction 53.
Limitation (Act IX of 1871) 29.

Set-Off.

1. The provisions of Act X of 1877 do not give the right to — claims for unliquidated damages, but that Act does not take away any right of —, whether legal or equitable, which parties to a suit would have independently of its provisions. (O. J.) I. L. R. 4 Bom. 407.

2. Where, therefore, in a suit for the price of goods sold and delivered, the defendant admitted that there was a sum of Rs. 1,159-12 due by him to the plaintiff, but sought to — the sum of Rs. 972 as damages sustained by him by reason of the non-delivery of some of the goods contracted for: *Held* that as the claim of the defendant against the plaintiff was connected with the same transaction, and arose out of one and the same contract, as that in respect of which the plaintiff's suit was brought, and as the amount of the defendant's claim was capable of being immediately ascertained, the defendant might — his claim. (O. J.) *Ib.*

See Costs 7.
Lumbardar 1.
Mortgage 88, 95.
Road Cess 1.
Zur-i-peshgee 1.

Settlement.

1. A — with Government and possession under it do not necessarily constitute proprietary right, much less can they destroy trusts to which the settlor was subject. (P. C.) 2 P. C. R. 512 (17 W. R. 41; 10 B. L. R. 19; 14 Moo. 289).

See Endowment 85.
Ferry 2.
Hindoo Law (Adoption) 36.
,, (Coparcenary) 3.
Hindoo Widow 15.
Limitation (Act IX of 1871) 40.
Oudh 1.
,, Estates 1.
Practice (Suit) 19.
Revenue Settlement.
Sub-Settlement.
Summary Settlement.
Talook 3.
Will 53.

Shankallap.

See Oudh Sub-Settlement 6.

Share.

See Ancestral Property 3.
Bhag.
Bond 5.
Co-Sharers.
Endowment 15.
Enhancement 14.
Execution of Decree 46.
Gift 5.
Hindoo Law (Coparcenary) 6, 11, 12, 15, 18, 21.
,, (Inheritance and Succession) 38.
Hindoo Widow 17, 29, 42, 44.
Illegitimate 10.
Joint Stock Company 3, 4.
Limitation 6.
,, (Act XIV of 1859) 18, 19.
,, (Act IX of 1871) 11, 14, 27.
,, (Act XV of 1877) 23.
Lumbardar 1, 2, 3.
Mortgage 57, 72, 75, 86, 87, 103, 109, 110.
Partition 8, 10, 18, 19.
Pre-emption 5.
Principal and Surety 3.
Putnee 3.
Puttee 2, 6, 7.
Relinquishment 3.
Res Judicata 8, 30.
Right of Occupancy 1.
Sale (for Arrears of Revenue) 1, 2.
Shareholder.
Sheriff 3, 6.
Transfer 5.
Will 24, 27, 28, 49.

Shareholder.

See Joint Stock Company 6.

Shebait.

See Endowment 4, 7, 14, 15, 17, 28.
Privy Council 22.

Sheeah.

See Dower 17.
Mahomedan Law 1.
Marriage 3.

Sheriff.

1. The purchasers at a sale by a — under a writ of *fieri facias*, upon being evicted by the execution-debtor, can recover from the execution-creditor the purchase-money which he has paid, if it should turn out that the — had no authority to execute the writ at the place where the property was situate. The rule of English law, which bars a purchaser by private contract from recovering the purchase-money, if evicted by a title to which the covenants do not extend, does not govern a case in which the sale, as regards the owner of the thing sold, is *in invitum* and made under color of legal process. Nor can the rule of English law, as to implied warranty of title in chattels sold, and regarding the application of the maxim *caveat emptor*, be applied to a sale of goods by the — under *fieri facias*. (P. C.) 3 P. C. R. 519 (L. R. 5 I. A. 116; I. L. R. 3 Cal. 806). (*Reversing* O. J. Ap. decision in 24 W. R. 372; I. L. R. 1 Cal 52.)

Sheriff *(continued)*.

2. A — who seizes property out of his jurisdiction is a trespasser, and in the position of an ordinary person who has sold that which he had no title to sell. (P. C.) *Ib.*

3. Held in appeal that, no agreement to mortgage being established, the sale by the — to A in 1864 overrode the mortgage to B, and passed to A the shares of M and N; and that the sale by the — in 1866, being of the right, title, and interest of N, M, and G, made at the instance of B without notice of her mortgage, and B having received the purchase-money which would appear to have been estimated on the value of the unencumbered shares, and no objection having been made to the sale by the mortgagors who had allowed A to hold unchallenged possession, the entire equitable estate in the share of G must be taken to have passed to A. (O. J. Ap.) I. L. R. 1 Cal. 337.

4. Certain immoveable property of the defendant was attached in execution of a decree which had been partly satisfied by the proceeds of a previous sale in execution. Before any proceedings for sale were taken under the attachment, the defendant paid the balance and satisfied the plaintiff's claim in full: *Held* that the — was entitled to poundage upon the amount so paid in satisfaction of the decree, and satisfaction of the decree was ordered to be entered, and the attachment withdrawn, subject to the payment of such poundage. (O. J.) I. L. R. 2 Cal. 385.

5. A purchaser of property, whether immoveable or moveable, at a sale in execution of a decree under Act VIII of 1859, has no right to recover his purchase-money, though it may turn out that the right, title, and interest of the judgment-debtor was nothing at all, unless the sale itself be set aside, and the sale will not be set aside by reason merely of the defect or absence of title in the thing sold on the part of the judgment-debtor; but if there is an express assertion that the goods sold are the property of the judgment-debtor, the — and the execution-creditor are bound by such warranty, to the extent, at least, that that one of them, in whose hands the purchase-money is, is bound to restore it to the purchaser, if the purchaser has not got that for which he paid. (O. J.) I. L. R. 2 Bom. 258.

6. Act VIII of 1859 s. 258 applies wherever a sale is set aside, whether for irregularity in publishing or conducting a sale, or for other grounds; and though the right of the purchaser to recover back his purchase-money, in case of the sale being set aside, is, by that Act, given expressly only where the sale is of immoveable property, yet the same consequence would follow where a sale of moveable property in execution has been set aside. Where, therefore, certain shares were attached by the execution-creditor as the property of the judgment-debtor, and were afterwards sold in execution by the —, and the execution and warrants and the Sheriff's proclamation of sale contained assertions of interest of the judgment-debtor in these shares, whereas he had no such interest: *Held* that the purchaser at the execution-sale was entitled to have the sale set aside, and his purchase-money returned to him; but the Sheriff's liability to the purchaser in such a case ceases so soon as he has paid over the proceeds of the sale to the execution-creditor, and the purchaser's remedy thereafter is against the execution-creditor only. (O. J.) *Ib.*

7. On 9th October 1866, the — of Calcutta executed a bill of sale to A of a certain talook situated in Oudh, of which A afterwards obtained possession. In consequence of an impression that the sale was illegal, A directed the — not to pay the money to B, the execution-creditor, and the money remained in the hands of the — until 24th October 1867, when A directed the payment of the money to B, in consequence of an arrangement then come to between A and B, to the effect that, if A should be ousted from the possession of the property within a year, B should take measures to reinstate him at his (B's) expense. A died without heirs in July 1868, and the Government of Oudh, not being aware that A had left a will, took possession of the talook, partly as on an escheat, and partly because there were arrears of revenue due on the property. On 2nd October 1868, an order was passed by the Collector of the district in which the talook was situate, declaring the sale by the — illegal, and directing the return of the talook to its former owners, which was done in April 1869. In a suit brought by A's executors against B in September 1872 to recover the purchase-money, as money had and received as upon a total failure of consideration: *Held* that the agreement of 24th October 1867 operated as an accord and satisfaction of all rights which A might have had to a return of the purchase-money or to damages, and that the only remedy which A had, was an action on the agreement. *Held* also that no breach of the agreement of 24th October 1867 had in fact occurred, and that, even if the agreement had been broken, the suit was barred by limitation. (O. J. Ap.) I. L. R. 6 Cal. 356.

See Mahomedan Law 8.

Shipping.

1. When a ship-owner has contracted to give a certain notice to a charterer, or to do any other act, with a view to inform the charterer when the ship will be ready, the charterer is not bound to ship his goods until the ship-owner has given him that notice or has done that act. *Held* therefore, in an action for not — goods under the following contract:—" H S to arrive after completion of two country voyages for London on notice in May or June," it appearing that the plaintiffs had sent the vessel for one country voyage only, that the defendants were entitled to refuse to ship the goods. (O. J. Ap.) I. L. R. 4 Cal. 237.

2. Where the defendant agreed to ship goods for a certain port, in a ship of which the plaintiffs were the sub-charterers, but failed to ship any portion of the goods, and the plaintiffs were unable to obtain any freight: *Held* in an action to recover the whole amount of the freight which would have been payable to the plaintiffs if the contract had been carried out, that the plaintiffs were entitled to recover as damages a sum equivalent to the entire freight agreed to be paid by the defendants for the goods in question, after deducting therefrom a proportionate part of the expenses of carriage which had been saved by reason of the service not having been rendered; also that the sum payable by the plaintiffs to the original charterers of the vessel for the intended voyage ought not to be deducted from the sum payable by the defendant, as the damages payable by the defendant must depend upon his own contract with the plaintiffs, and not upon the terms of the bargain between the plaintiffs and the original charterers. (O. J. F. B.) I. L. R. 5 Cal. 578.

See Bailment 5.
Bill of Lading 1.
Hoondee 11.
Principal and Agent 7.
Transshipment.

Shivagunga.

The zemindaree of — was held to be impartible. The daughter of the Istimrar zemindar did not take the zemindaree as her *streedhun*; her interest in it ceased with her life. *See* recent P. C. decision (not yet reported) in *Muttu Vaduganadha Tivar* v. *Dorasinga Tevar*, 14th May 1881.

Signature.

See Arbitration 8.
Bailment 5.
Contract 19.
Co-Sharers 9.
Evidence (Admissions and Statements) 4.
,, (Documentary) 4, 13.
Hindoo Law (Adoption) 14.
Judgment 3.
Limitation (Act XIV of 1859) 8.
,, (Act IX of 1871) 64, 68, 94, 108.
,, (Act XV of 1877) 25.
Misrepresentation 1.
Mokurruree 6.
Mortgage 8.
Purdah Woman 3, 5, 6.
Registration 26.
Stamp Duty 14.
Will 23, 32, 47, 58.

Silence.

See Mortgage 53, 75, 76.

Sirdar.

See Execution of Decree 28.
Limitation (Act IX of 1871) 85.

Sister.

See Guardian and Minor 19.
Half-sister.
Half-sister's Daughter.
Hindoo Law (Inheritance and Succession) 10, 18, 41, 48, 49.
Mahomedan Law 8, 10.
Mother's Sister's Son.
Sister's Daughter's Son.
Sister's Son.
Slander 1.
Succession 6.

Sister's Daughter's Son.

See Hindoo Law (Inheritance and Succession) 50.

Sister's Son.

See Hindoo Law (Adoption) 34, 41.

Slander.

1. Plaintiff sued for damages for — of plaintiff's sister. The Lower Court, regarding the suit as defective for want of parties, made plaintiff's sister a co-plaintiff under Act VIII of 1859 s. 73: *Held* on appeal that the defect was one not to be remedied under that section; and that, as there was no right of suit in the plaintiff, the suit should have been dismissed. I. L. R. 1 Mad. 383.

Slave.

1. Act V of 1843, which was intended to remove all the disabilities arising out of slavery, was held to prevent the application of the Willa rule of Mahomedan law, whereby the natural heirs of the emancipated were excluded by the heirs of the emancipator, and consequently to entitle the granddaughters of a — girl (who, after giving birth to their mother, was emancipated by her master on the day previous to the celebration of a *nikah* marriage, by which she became his wife) to succeed to their grandmother as her natural heirs, as they would have done but for that Act. (P. C.) 3 P. C. R. 633 (L. R. 6 I. A. 137; I. L. R. 3 Bom. 422).

2. R, having obtained possession of D, a girl about eleven years of age, disposed of her to a third person, for value, with intent that such person should marry her, and such person received her with that intent: *Held* that R could not be convicted of disposing of D as a — under s. 370 Penal Code. (F. B. Cr.) I. L. R. 2 All. 723.

See Illegitimate 10.
Zanzibar 2.

Small Cause Court.

1. The Small Cause Court in the Presidency town is not a Court of co-ordinate jurisdiction with the High Court, but a Court of inferior jurisdiction and subject to the orders and control of the High Court. Accordingly where, on a prisoner being brought up to the High Court on a writ of *habeas corpus*, the return of the jailor stated that the prisoner was detained under a warrant of arrest issued in execution of a decree of the —: *Held* that the return was was not conclusive, but the prisoner was entitled to show by affidavit that he was privileged from arrest at the time he was taken into custody. *Held also* that, on the facts shown in the affidavit, the prisoner was privileged at the time of his arrest. The prisoner was required, however, before his discharge, to give an undertaking that he would bring no action for damages for illegal arrest or false imprisonment against the Judges of the —, the bailiff, the jailor, or the judgment-creditor. (O. J.) I. L. R. 1 Cal. 78. *See* I. L. R. 5 Cal. 106.

2. A suit for money due on a contract within the meaning of Act XI of 1865 s. 6 is none the less cognisable by a —, because it may be necessary to go into the accounts of both parties to see whether the amount claimed is really due or not. I. L. R. 1 Cal. 123 (24 W. R. 478).

And therefore no second appeal lies in such a suit under Act X of 1877 s. 586. I. L. R. 6 Cal. 284.

3. A —, constituted under Act IX of 1850, can during the same day, and at the same sitting of the Court, *ex-parte* restore a cause once struck out under s. 42, though the order for striking off may have been duly recorded. In such a case, it would be open to the defendant to apply to set aside such *ex-parte* order; and the sufficiency of the grounds of the application would be a question for the discretion of the Judge. (O. J.) I. L. R. 1 Cal. 476.

4. In permanently investing, under Act XI of 1865 s. 51, the Judges of the — at Agra, Allahabad, and Benares, with the powers of a Principal Sudder Ameen (Subordinate Judge), the Local Government did not exceed its power or contravene the law, although the occasional investiture of — Judges by name, from time to time, with the powers of a Principal Sudder Ameen, may have been the mode of procedure contemplated by the Legislature as the one likely to be adopted. I. L. R. 1 All. 87.

5. The defendant and J W C, Clerk of the — at Allahabad, entered into a bond to the Judge of the — as well as to his successors in office, in a certain sum as security for the true and faithful performance by J W C of his duties as clerk of the said —, and for his well and truly accounting for all moneys entrusted to his keeping as such Clerk of the Court: *Held*, in a suit against the defendant as surety, that he was liable for misappropriation by J W C of moneys arising from sales of moveable property held in execution of decrees passed by the Judge of the — in the exercise of his powers as Subordinate Judge, and that had the — Judge not been invested, at the time of the execution of the bond, with the powers of a Subordinate Judge, the defendant's liability in respect of such moneys would not have been thereby affected. *Ib.*

6. Where plaintiff sued defendant in the Civil Court for recovery of a sum alleged to have been paid by plaintiff to defendant under a mistake, in excess of the sum due in satisfaction of a decree of the —: *Held* by Stuart *C. J.* (Pearson *J.* dissenting) that such a suit was in the nature of one for damages cognisable by the — and was not barred by the terms of Act XXIII of 1861 s. 11, the question involved in the claim not being one which could properly arise in execution proceedings, that must be confined to matters embraced in the decree passed between the parties to the suit. I. L. R. 1 All. 388. *But see* (F. B.) I. L. R. 2 All. 61.

7. Plaintiff claimed from defendants, as joint decree-holders, a fourth share of the proceeds realized by auction-sale, through the Court of the Moonsiff, of certain houses situate on land subject to a village custom whereby a proprietary due of the above amount was recognised and payable to the zemindar of the said land. The Division Bench of the High Court having referred to the Full Bench the question whether claims for such zemindaree dues or cesses were in the nature of suits cognisable by a —: *Held* by the F. B. that the claim as brought does not fall within any of the classes of suits cognisable by the —; *aliter* if the due is payable in virtue of a contract. *Held* by the Division Bench that the claim is not bad for misjoinder, as the due was payable out of the sale proceeds taken out of Court by the decree-holders. (F. B.) I. L. R. 1 All. 444.

The above principle was followed in a suit by a zemindar for one-fourth of the price of trees cut by tenants, which suit, being based upon contract, and the amount claimed being under Rs. 500, was held cognisable in a —, no second appeal lying in such a suit. I. L. R. 2 All. 905.

8. The effect of Act XXVI of 1864 s. 2 is to extend the compulsory jurisdiction of a — in a Presidency town, in suits to recover property, to cases where the value of the property does not exceed Rs. 1,000. Consequently, the — at Bombay has jurisdiction to try a suit for the possession of immoveable property of a value greater than Rs. 500 and less than Rs. 1,000. (O. J.) I. L. R. 2 Bom. 84.

SMALL CAUSE COURT (*continued*).

9. In a suit brought under Act IX of 1850 s. 91, the — at Bombay has no jurisdiction to try a question of adverse title to the immoveable property, the subject of the suit. *Aliter* if the suit be brought under Act IX of 1850 s. 25, as extended by Act XXVI of 1864 s. 2, and the value of the property in dispute do not exceed Rs. 1,000. (O. J.) I. L. R. 2 Bom. 91.

10. In a case involving a question of adverse title, the plaintiff should not be allowed to amend the summons issued under Act IX of 1850 s. 91, so as to render it conformable with a claim under Act XXVI of 1864 s. 5, if the summons were issued in the mistaken form by the fault of the Clerk of the —, and not of the plaintiff. (O. J.) *Ib.*

11. The Judge of a — who has been duly invested with the powers of a Subordinate Judge under Act XI of 1865 s. 51, has "general jurisdiction" within the meaning of s. 20, and can consequently enforce a decree against the immoveable property of the judgment-debtor. I. L. R. 1 All. 624.

12. Plaintiff was owner of moveable property attached in execution of a decree, and his claim to such property having been rejected under Act VIII of 1859 s. 246, he brought this suit to recover possession: *Held* that the suit was cognisable by a Mofussil —. I. L. R. 2 Bom. 365.

13. *Quære* whether Act X of 1877 allows such a suit by an alleged owner to be brought in a —. *Ib.*

14. Under Act X of 1877 a Mofussil — is not at liberty to execute a decree against moveable property beyond its local jurisdiction. I. L. R. 2 Bom. 532.

15. As a — cannot appoint a receiver, any bonds on which recovery will be time-barred before the date on which a sale can legally be made, cannot be made available for satisfaction of the judgment-debtor's debt. I. L. R. 2 Bom. 558.

16. Act X of 1877 s. 223 does not apply to a —; and s. 648 does not apply to a case in which the defendant resides within the same district in which the Court issuing a warrant is situate. Consequently a — may issue a warrant for the arrest of a person residing in another district, but not if he resides within the same district in which the Court is situate, but outside its local jurisdiction. I. L. R. 2 Bom. 560.

17. A tradesman cannot, by keeping separate accounts of his dealings with a customer, split his cause of action so as to bring his suit within the jurisdiction of a —. (O. J.) I. L. R. 2 Bom. 570.

18. In the absence of any special bond or other contract for the payment of maintenance, a suit for maintenance is not cognizable in a Mofussil — under Act XI of 1865 s. 6. I. L. R. 2 Bom. 624, 632.

19. The effect of Act X of 1877 s. 5, coupled with sch. 2, is to render the whole of Chap. XX (relating to insolvent debtors) inapplicable to a Mofussil —, notwithstanding the words "any Court other than a District Court" and "any Court situate in his district" which occur in that section. Consequently, the Government Resolution of 3rd April 1878, investing the Judge of the — at Ahmedabad with powers, under the said chapter, to adjudicate in insolvency matters, is *ultra vires* and invalid. I. L. R. 2 Bom. 641. *See post* 21.

20. There is nothing in the first part of Act XI of 1865 s. 21 showing that an application in accordance with that portion of the section is limited to the first occasion on which a defendant puts in an appearance to a suit. Where, therefore, a case is adjourned from the date fixed in the summons to any later date, and on such later date a defendant is prevented by sufficient cause from appearing, and in default of such appearance an *ex-parte* decree is given against him, he may apply under the first part of s. 21 for an order to set aside such decree. I. L. R. 4 Cal. 318.

21. Act X of 1877 s. 336 cl. 5 applies to — debtors, and such persons can obtain the benefit of Chap. XX of that Act by applying to a Court which has jurisdiction under that chapter. I. L. R. 2 Mad. 9. *See* 19 *ante.*

22. A suit to recover *baluta* leviable on the crops of village lands is not a suit for an interest in land, but for a share of produce severed from land, and is cognizable by a Mofussil —. I. L. R. 3 Bom. 28.

23. Plaintiff, the holder of a *putnee* talook, by an arrangement with the defendants his zemindars, paid the Government revenue and the road cess for 1874, and then tendered the balance of the rent for that year to the defendants, who refused to accept it, whereupon he deposited it in the Moonsiff's Court in accordance with Act VIII of 1869 (Bengal) s. 46. One of the defendants then took proceedings under Reg. VIII of 1819 to recover his share of the rent, and notwithstanding the protest of the plaintiff that the rent had been already paid, obtained an order for the sale of the tenure; and to prevent the sale, plaintiff had to pay the sum claimed for rent, and now brought a suit to recover that amount with interest: *Held* that it was a suit cognizable by a — under Act XI of 1865 s. 6, and therefore a special appeal was barred by Act XXIII of 1861 s. 27. It was not a suit for "damages on account of illegal exaction of rent" within the meaning of Act X of 1859 s. 23 cl. 2. I. L. R. 4 Cal. 595.

24. The incidental determination of an issue of title in a suit for rent of the nature cognizable in a — does not finally estop the parties to such suit from raising the same issue in a suit brought to try the title. I. L. R. 2 All. 97.

25. In appeal an objection was taken that the amount claimed by the plaintiff being less than Rs. 500, the suit was cognizable by a —, and that therefore there was no second appeal: *Held* that the suit might be regarded as one for arrears of rent at an increased rate, and as such was not cognizable by a —. I. L. R. 3 Bom. 154.

26. A decree of a — can be executed by it at any place within the local limits of the District Court to which it is subordinate, as defined by Act X of 1877 s. 2, without having recourse to the procedure under s. 648, which applies only to cases in which a decree passed in one district has to be executed in another district. I. L. R. 4 Cal. 823.

27. A suit brought by a defeated claimant, under Act X of 1877 s. 283, to establish his right to, and to recover possession of, certain moveable property attached in execution of a decree of a —, is within the jurisdiction of, and must therefore, under Act XI of 1865 s. 12, be instituted in, a —. I. L. R. 3 Bom. 179.

28. A suit brought in a District Moonsiff's Court, filed on the same day as a suit for the same amount brought on the same cause of action in the —, is not a bar to the maintenance of the suit in the —; but the plaintiff must elect which suit he will proceed with. I. L. R. 2 Mad. 123.

29. A suit to recover a refund of moneys paid under an order of Court is not cognizable by a —. I. L. R. 5 Cal. 494.

30. A suit by one party against another for contribution, where the sureties are bound by the same instrument, is a suit on an implied contract, and therefore within the jurisdiction of a —. I. L. R. 4 Bom. 321.

31. A suit under Act IX of 1872 s. 72 to recover from a creditor the amount of an over-payment made to him by mistake, is a suit for damages within the meaning of Act XI of 1865 s. 6, and is accordingly cognizable by a Mofussil —. I. L. R. 2 All. 671.

32. A suit by a decree-holder to establish his right to attach and sell moveable property as belonging to his judgment-debtor, is not a suit for personal property within the meaning of Act XI of 1865 s. 6, and a Mofussil — has no jurisdiction to entertain it, even though the value of the property be such as to fall within its pecuniary limit. I. L. R. 4 Bom. 503.

33. By Act XI of 1865 s. 6, suits to recover damages for personal injury cannot be brought in a Mofussil — unless actual pecuniary damage has resulted from the injury. That section excludes from the jurisdiction of a Mofussil — suits for defamation, infringement of right, and the like, where no actual pecuniary damage has been sustained by the plaintiff, and where the measure of damages to be awarded is often a question of some nicety; but does not exclude suits for actual damages merely because, besides the actual pecuniary loss sustained, the plaint asks for something additional for loss of character or other indefinite injury. I. L. R. 5 Cal. 925.

34. A Judge of a Mofussil — has jurisdiction to direct a new trial of a case tried by his predecessor, Act XI of 1865 s. 21 not having been repealed by Act X of 1877. The Judge, however, in dealing with applications for new trial under s. 21, should have regard to the rule laid down in Act X of 1877 s. 624. I. L. R. 6 Cal. 236.

See Arbitration 21.
Arrest 4.
Deccan Agriculturists Relief 4.

SMALL CAUSE COURT (*continued*).

See Execution of Decree 7, 8, 32.
High Court 15.
Jurisdiction 14.
Lakheraj 1, 2.
Municipal 12.
Practice (Review) 19.
Sale (in Execution of Decree) 50.
Special Appeal 4, 5, 9.

Sohagpore.

See Churs 14.

Solicitor.

1. Fraud of — in making false statement in a deed. (P. C.) 2 P. C. R. 155 (10 W. R. P. C. 43; 1 B. L. R. P. C. 55).
2. Power of High Court to strike a — off the rolls. (P. C.) *Ib.*

See Attorney and Client.
Will 57.

Son.

1. Natural —. *See* Maintenance 2, 3; Partition 23*a*; Rent 2.
2. Eldest — (adoption of). *See* Endowment 28.
3. Adopted —. *See* Certificate 7; Guardian and Minor 23; Hindoo Law (Adoption) 32, 43, 45, 46; Hindoo Widow 50; Partition 23*a*.
4. Only —. *See* Hindoo Law (Adoption) 37, 40.
5. Posthumous —. *See* Will 46.
6. Step —. *See* Hindoo Law (Inheritance and Succession) 188.

See Ancestral Property 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14.
Auction-Purchaser (Execution-Sale) 1.
Benamee 1, 2, 4, 5, 13.
Daughter's Son.
Father's Brother's Daughter's Son.
Gift 2, 11, 14, 15.
Hindoo Law (Adoption) 15, 41.
,, (Inheritance and Succession) 3, 16, 29, 36, 37, 38.
Hindoo Widow 10, 24, 39.
Insolvency 1.
Legitimacy 4.
Limitation (Act XIV of 1859) 15.
Mahomedan Law 5.
Maintenance 5.
Mortgage 75, 76, 107.
Mother's Sister's Son.
Naikins 2.
Partition 18, 20, 22, 25.
Res Judicata 31.
Self-Acquired Property 1.
Sister's Daughter's Son.
Sister's Son.
Son's Widow.
Will 10*a*, 11, 15.

Son's Widow.

See Hindoo Widow 34.

Soodra.

See Hindoo Law (Adoption) 22, 31, 37.
,, (Inheritance and Succession) 44.

See Illegitimate 1, 4, 5, 10.
Lingayat 1.
Marriage 1.

Soonderbunds.

1. Finality of decree of Special Commissioners under Reg. III of 1828. (P. C.) 2 P. C. R. 184 (11 W. R. P. C. 14; 2 B. L. R. P. C. 33; 12 Moo. 225).

Soonnee.

See Husband and Wife 15.
Mahomedan Law 1.
Marriage 3.

Sooniasis.

See Endowment 31.

Soudayakam.

See Husband and Wife 8.

Special Appeal (or Second Appeal).

1. The High Court was held to have no jurisdiction in — to over-rule the decision of the Judge by allowing a conversion of Azeemabadee rupees into Company's rupees according to a fresh calculation, in a suit for enhancement of rent. (P. C.) 3 P. C. R. 32 (22 W. R. 316; L. R. 2 I. A. 1).
2. Where an issue was not raised in the first Court, nor taken in the grounds of appeal, it is too late to set it up for the first time in —, especially if the evidence has not been directed to it. (P. C.) 3 P. C. R. 87 (23 W. R. 208; 15 B. L. R. 67; L. R. 2 I. A. 87). *See also* I. L. R. 1 Bom. 197.
3. A judge cannot be said to act strictly within his power upon a —, if his judgment proceeds upon inferences drawn from the evidence but contrary to the inferences drawn by the two Courts below, and so far involves a review of their decision upon matters of fact. (P. C.) 3 P. C. R. 623.
4. Where a suit is improperly brought in a Civil Court which has no jurisdiction to entertain it, instead of in a Small Cause Court which has jurisdiction, Act XXIII of 1861 s. 27 does not bar the parties coming up in — to have the matter set right. I. L. R. 1 Cal. 123 (24 W. R. 478).
5. No — lies to the High Court in a suit cognizable by a Small Cause Court, although a question of title to immoveable property has been raised and tried in the Court below. (F. B.) I. L. R. 2 Cal. 470.
6. No — lies under Act VIII of 1869 (Bengal) s. 102, from the decision in a suit for rent under Rs. 100, when no question of right to enhance or vary the rent of a ryot or tenant, nor any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment. (F. B.) I. L. R. 3 Cal. 151.
7. A sued B in the Court of first instance, and obtained a decree declaring A's right to a house. The District Court, in appeal, reversed this decree and rejected A's claim. The High Court reversed the decree of the District Court, and remanded the appeal. The District Court, on remand, made a decree confirming the original decree of the Court of first instance in A's favor. Subsequently to the last mentioned decree of the District Court, B sold the house to C. B then preferred a — to the High Court, but died before it was heard: *Held*, under Act VIII of 1859, that C could not carry on the — after B's death. I. L. R. 2 Bom. 248.
8. Although, as a rule, the High Court will not permit grounds of appeal to be taken in argument which have not been taken in the memorandum of —, yet where a decree comes before it which is upon its very face illegal, the Court is bound to take up the point itself and rectify the mistake. I. L. R. 3 Cal. 612.
9. Where a suit of the nature cognizable in a Small Cause Court was instituted before Act XLIII of 1860 came into force, and an order was made in regular appeal in execution of the decree in such suit after the passing of Act XXIII of

Special Appeal (or Second Appeal) (*continued*).

1861: *Held* that s. 27 of the latter Act applied, and that therefore no — would lie from such order. I. L. R. 2 All. 112. *See also* 20 W. R. 421 (12 B. L. R. 261).

10. A defendant who obtains a judgment in his favor in the Court of first instance, and who, on appeal by the plaintiff, does not appear at the hearing of the appeal or present a petition for a rehearing, may, under Act X of 1877 s. 584, present a second appeal against the decree of the Lower Appellate Court. I. L. R. 2 Mad. 75.

11. Second appeals to the High Court must either come within Act X of 1877 chap. XLII or ss. 588 and 591. I. L. R. 5 Cal. 711.

12. In disposing of a second appeal the High Court is competent, under Act X of 1877 s. 42, to consider the question whether the plaintiff has any cause of action or not, although such question has not been raised by the defendant-appellant in the Courts below or in his memorandum of second appeal, but is raised for the first time at the hearing of such appeal. I. L. R. 2 All. 884.

13. An appellant who has obtained a decree setting aside the decision of the Court of first instance, is not entitled to a further appeal to the High Court, on the ground that he is dissatisfied with some of the findings recorded in the judgment of the lower Appellate Court, an appeal from an appellate decree under Act X of 1877 s. 584 being strictly restricted to matters contained in the decree alone. I. L. R. 6 Cal. 206.

See Costs 2.
Declaratory Decree 16.
Decree 4.
Enhancement 17.
Execution of Decree 19.
Ex-Parte 2.
High Court 2, 30.
Insolvency 13.
Limitation (Act XIV of 1859) 24.
Mortgage 73, 98.
Municipal 7, 8.
Privy Council 27.
Small Cause Court 2, 7, 23, 25.
Watercourse 2.

Specific Performance.

See Attorney and Client 11.
Contract 2, 9, 27, 28, 29.
Endowment 23.
Hindoo Law (Adoption) 36.
Joinder of Causes of Action 2.
Jurisdiction 47.
Limitation (Act IX of 1871) 14, 93.
,, (Act XV of 1877) 34.
Marriage 6.
Mortgage 100, 116.
Putnee 8.
Registration 15.
Sale 5, 9.
Toda Giras Huk 9.
Vendor and Purchaser 1.
Watercourse 3.

Splitting Cause of Action.

1. A true test of the proper application of Act VIII of 1859 s. 7 to any case is whether there has been any —. (P. C.) 2 P. C. R. 474 (14 Moo. 192; 10 B. L. R. 1).

2. The fact that, at the time when the purchaser of certain lands sued, with a view of confirming his title to the lands under his purchase, for a decree declaring such title, he was in a position to have sued for possession of the lands, was no bar under Act VIII of 1859 s. 7 to his subsequently suing for possession of the same. I. L. R. 1 All. 252.

3. Where two suits were instituted simultaneously, and one of them had been determined: *Held* that, assuming that the claims in such suits arose out of the same cause of action and should have been included in one suit, Act VIII of 1859 s. 7 was no bar to the entertainment of the second suit. I. L. R. 1 All. 650.

4. D, being able to sue for the possession of certain property, omitted to do so, and sued in the first instance only for a declaration of her right to such property. The Court refusing to make any such declaration on the ground that she could sue for possession, D then sued for possession: *Held* that the second suit was not barred by Act VIII of 1859 s 7. (F. B.) I. L. R. 2 All. 356.

See Small Cause Court 17.

Splitting Offence.

See Unlawful Assembly 1.

Spring.

See Public Spring or Reservoir.

Stamp Duty.

1. A document may be refused to be admitted for want of a stamp; or if insufficiently stamped, it may be required to be properly stamped and the penalty paid into Court. But an Appellate Court has no authority to leave a deed insufficiently stamped as part of the evidence in a case, and to qualify its effect and the extent of its operation by making it a deed of release, releasing so much of plaintiff's claim as would be covered by the insufficient stamp. (P. C.) 2 P. C. R. 407 (15 W. R. P. C. 32; 14 Moo. 24).

2. Held that the letters of assignment to the plaintiffs in this case were not mortgages within the definition of Act XVIII of 1869, and that the proper stamp to be affixed to such documents is a stamp of 8 annas. (O. J. Ap.) I. L. R. 2 Cal. 58.

3. The accused was prosecuted, under Act XVIII of 1869 s. 29, for executing a document on insufficiently stamped paper. The document recited that "whereas A and B have sold to me 2 gundas 3 cowrees of land under a *kubala* dated the 9th of Jeyt 1283 in lieu of a consideration of Rs. 695, and whereas I have returned to the vendors in all 4 cottahs of land worth about Rs. 25, and whereas in lieu of the said land the said vendors have given me 4 cottahs of *zerait* land held by them, now I or my heirs shall have no objection or contest whatever in regard to the mutual exchange of lands between the vendors and me the purchaser; hence I have executed this chitti by way of conveyance or deed of exchange, which may be of service when required." This document bore a stamp of 8 annas, and it was executed only by the accused and presented by him for registration: *Held* that the document was an instrument of transfer within the meaning of Act XVIII of 1869 sch. 2 art. 38; and that a Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person prosecuted under s. 29 had any intention to defraud by evading payment of —. (F. B. Cr.) I. L. R. 2 Cal. 399.

4. Where a document, purporting to be a conveyance, and for only one consideration, contains words which merely express, though very informally, the usual covenants for title which every properly drawn English conveyance contains, those words cannot be construed as constituting an indemnity bond, so as to render the document liable to be stamped as an indemnity bond in addition to the — to which it is liable as a conveyance. I. L. R. 1 Mad. 133.

5. An agreement with a firm at Madras was first executed in England by the senior partner in the firm, and stamped with the stamp required by English law for agreements executed in England; and it was subsequently executed in India by the other two partners, but not stamped with an Indian stamp: *Held* that the agreement was liable to Indian —, and was not admissible in evidence unless and until the proper — and penalty under Act XVIII of 1869 were paid. (O. J.) I. L. R. 1 Mad. 134.

6. What —, if any, is chargeable on a policy of insurance bearing three endorsements: (1) an assignment of all the

Stamp Duty (*continued*).

right, title, and interest of the assured to the P Bank; (2) a retransfer from the P Bank to the assured, all claims having been satisfied; and (3) an assignment by the assured, similar to the first assignment, to B R S & Co. I. L. R. 3 Cal. 349.

7. A Magistrate who has been authorized by the Collector of a district, under Act XVIII of 1869 s. 43, to prosecute offenders against the stamp laws, is not competent also to try persons whom he prosecutes. The Collector should appoint some person other than a Magistrate to conduct the prosecution. (Cr.) I. L. R. 3 Cal. 622.

8. Where the Lower Court, treating as a bond an unstamped promissory note the after-stamping of which was inadmissible, received such instrument in evidence on payment of the — chargeable on it as a bond and of the penalty: *Held* that the reception of such instrument by such Court being an irregularity not affecting the merits of the case, was no ground for reversing the decree of such Court when the same was appealed from. I. L. R. 1 All. 725.

9. A vakalutnamah authorizing a pleader to receive during the course of a suit which he has been empowered to conduct, money or documents receivable by his client in the ordinary course of such suit, or in consequence of the order or decree of the Court in such suit, does not require a stamp under Act XVIII of 1869. I. L. R. 3 Cal. 767.

10. The question of the admissibility of an insufficiently stamped document once admitted as evidence by a Court can form no valid ground of appeal. I. L. R. 3 Cal. 787.

11. An Appellate Court has no authority to direct the reception of an unstamped document to which Act XVIII of 1869 s. 20 applies, unless the amount of — and prescribed penalty was tendered when the document was first offered in evidence and rejected. I. L. R. 4 Cal. 213.

12. An instrument authorizing a person to receive on behalf of another such sums as should become due in the course of the execution of a certain work, is not an assignment of money, but a power of attorney, and is covered by a stamp of Rs. 8 whatever may be the amount recoverable under it. I. L. R. 3 Bom. 49.

13. A bank memorandum informing one of their customers that money has been paid to his account by a third person and has been credited to that account, does not require to be stamped under Act XVIII of 1869 s. 2 art. 7. I. L. R. 4 Cal. 829.

14. When an account in a *hatchitta* has two sides to it, the one headed "amount advanced," and the other headed "amount received," and the amount actually due on such account varies from time to time, and depends upon the relation of the amount advanced to the amount received, and the signature or seal of the borrower is affixed to each entry showing an advance, such an entry is not a note or memorandum whereby any debt is acknowledged to be due, and does not require a stamp under Act XVIII of 1869 sch. 2 art. 5. I. L. R. 4 Cal. 885.

15. Where an instrument consisted of two parts, the first containing a promise to repay with interest a sum of Rs. 12-8 and the second a further promise to give a quantity of grain: *Held* that, as an agreement the instrument re[illegible] a stamp of eight annas under Act XVIII of 1869 s. 14 [illegible] 11; but that as a simple money bond it was qu[illegible] and sch. 2 a[illegible] stamp of two annas; and that, if properly stamped with a [illegible] claim for grain, he could the promisee abandoned his c[illegible] with interest. recover upon it the principal sum advanced. I. L. R. 4 Bom. 19.

16. A decision of a Judge directing a penalty to be enforced under the Stamp Act, the case being afterwards proceeded with, is not appealable as a decree, as it cannot be said to be a decree affecting the merits of the case or the jurisdiction of the Court. Nor can such a decision be said to be "an order as to a fine" within the meaning of Act VIII of 1859 s. 365 (corresponding with Act X of 1877 s. 588, cl. 29), which is not intended to apply to penalties under the Stamp Act, but only to fines which may be levied under the Code itself. I. L. R. 5 Cal. 311.

17. Under Act XVIII of 1869 s. 9, a one-anna stamp is the proper stamp for a document containing an account stated, and stipulating for payment of interest. I. L. R. 4 Bom. 326.

18. A postscript to a document contained a stipulation that the defendant should return two promissory notes deposited with him when a certain house was given back to him in good order: *Held* that the document required a stamp of eight annas under Act XVIII of 1869 sch. 2 art. 2. I. L. R. 4 Bom. 328.

19. An objection may properly be taken in a Court of first appeal to an unstamped document, and such Court is bound to entertain the objection and may direct that the document be stamped and the penalty imposed. I. L. R. 2 All. 554.

20. Plaintiff, as administrator of D, sued to recover from defendants Rs. 3000 alleging that in February 1878 the said sum had been entrusted to defendants Nos. 1 and 2 for investment on D's account, and had been advanced by them as a loan to defendant No. 3. The defendants alleged that the money was originally the property, not of D, but of plaintiff himself; that he had made it over as a gift to his daughter P, by whom it had been lent to defendant No. 3; and that defendant No. 3 had duly repaid it to P. In the defendant's written statement it was alleged that the gift to P had been made in the month of February 1878, and evidence to this effect was given at the trial. At the trial, however, the defendants also alleged that in July 1878 plaintiff had executed an instrument of gift of the Rs. 3000 to P, and they produced a document, dated 3rd July 1878, purporting to be signed by plaintiff, whereby he made over Rs. 3000 to P of which Rs. 1000 was to be held in trust for D during D's life, and to be paid back to plaintiff on D's death, and the remaining Rs. 2000 were to be the property of P absolutely. When tendered in evidence, the document was objected to as unstamped, and therefore inadmissible: *Held* that the document, though unstamped, was admissible in evidence, on the ground that the purpose for which it was tendered was collateral to the object of the document, and that its admission did not involve giving effect to it as operative between the parties to it. (O. J.) I. L. R. 4 Bom. 349.

21. *Held* that the entry of a balance struck, not being signed by the defendant, was not a note or memorandum of the kind mentioned in Act XVIII of 1869 sch. 2 art. 5, and did not therefore require to be stamped. I. L. R. 2 All. 641.

22. One of the clauses of an instrument by which one party to the instrument bound himself, in the event of a breach on his part of any of the conditions of the instrument, to pay the other thereto a penalty of Rs. 5000, being regarded as a "bond" within the meaning of Act I of 1879, such instrument, if that instrument were not so regarded, being an agreement chargeable under that Act with a — of eight annas: *Held* that the instrument was chargeable, under s. 7 of that Act, with the — leviable on a bond for Rs. 5000. (F. B.) I. L. R. 2 All. 654.

23. *Held* that the words "the final order" used in the definition of an "instrument of partition" in Act I of 1879 mean, not the order authorising a partition to proceed, but the order passed after the partition has been made declaring the various allotments of land; that the — chargeable under that Act on an instrument of partition is chargeable in respect of the entire property sought to be divided, and not merely in respect of that portion of it allotted to the applicant for partition; and that, for the purposes of that Act, the value of the property is to be computed with reference to its market-value and not with reference to the Court Fees Act VII of 1870. (F. B.) I. L. R. 2 All. 664.

24. The Collector, being primarily responsible for the prosecution of offences against the Stamp Acts of 1869 and 1879, should not himself try, as a Magistrate, a person accused of an offence against either of those Acts. (Cr.) I. L. R. 2 All. 806.

[illegible] 8.

See Bond [illegible]

Court Fees.

Declaratory Decree 14.

Hoondee 7.

Jurisdiction 51.

Limitation (Act IX of 1871) 18.

Mortgage 110.

Pauper Suit or Appeal 2, 5.

Plaint 14.

Practice (Appeal) 11.

Promissory Note 2.

Registration 26.

Statutes.

13 Eliz. c. 5. *See* Insolvency 5.
22 & 23 Car. II c. 10 (Statutes of Distribution) s. 5. *See* Succession 5.
11 & 12 Vic. c. 21. *See* Insolvency 3, 16.
,, s. 7. *See* Insolvency 12.
,, s. 9. *See* ,, 15, 18, 19.
,, s. 13. *See* ,, 14.
,, s. 23. *See* ,, 6, 7.
,, s. 24. *See* ,, 2, 16.
,, s. 26. *See* ,, 5.
,, s. 36. *See* ,, 11.
,, s. 40. *See* ,, 9.
,, s. 51. *See* ,, 21.
,, s. 60. *See* ,, 23.
15 & 16 Vic. c. 86 s. 50. *See* Declaratory Decree 6.
17 & 18 Vic. c. 125 (Common Law Procedure Act, 1854). *See* Arbitration 7.
21 & 22 Vic. c. 106. *See* Will 45.
24 & 25 Vic. c. 67 s. 22. *See* Privy Council 88.
,, c. 104. *See* High Court 19.
Jurisdiction 9.
Privy Council 88.
,, s. 9. *See* Privy Council 38.
,, s. 11. *See* ,, 38.
,, s. 13. *See* Limitation (Act IX of 1871) 39.
,, s. 15. *See* Execution of Decree 21.
Ex-Parte 2.
High Court 2, 8, 13, 22, 25, 27.
Jurisdiction 57.
28 & 29 Vic. c. 15. *See* Jurisdiction 9.
32 & 33 Vic. c. 71 s. 15. *See* Insolvency 9.
40 Vic. c. 7 (Mutiny Act) s. 99. *See* Execution of Decree 24.
41 Vic. c. 10 (Mutiny Act) s. 101. *See* Jurisdiction 48.

Stepmother.

See Hindoo Law (Inheritance and Succession) 41, 46, 47.

Sthanam.

4. Lands attached to the —of Sthanamdars in Malabar are, unless the contrary be specifically proved in any particular case, liable to alienation and charge, at all events for the payment of debts incurred for the conservation of the —. I. L. R. 1 Mad. 88.

Stolen Property.

1. A Government currency-note was stolen from A, and cashed by B in good faith for C. On the conviction of C for theft, the Magistrate ordered the note to be given to B. A appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of Appeal under Act X of 1872 s. 419, but submitted the case for the orders of the High Court: *Held* that the case could be disposed of by the Judge, as the words "Court of Appeal" in s. 419 are not necessarily limited to a Court before which an appeal is pending; and that Act IX of 1872 s. 76 did not apply, as the change of a currency-note for money is not a contract of sale, and that as the note came honestly into the hands of B, the order of the Magistrate was right. (Cr.) I. L. R. 3 Cal. 379.

2. A Government promissory note was stolen from the Public Debt Office to which it had been sent for enfacement, and was endorsed over by the thief to a person who sold it to C for full value. The note bore two blank endorsements prior to that of the thief. In the same month C applied to the Bank of Bengal for a loan, which the Bank agreed to make upon the security of C's promissory note and the deposit of Government notes. The application for the loan specified the numbers of the notes to be deposited, one of them being the stolen note. Before making the advance, the Bank ascertained from the Public Debt Office that the notes were not stopped. Shortly after the loan was made, the theft was discovered and the note was stopped. In the following month, the Bank, at C's request, sent the note to the Public Debt Office for payment of interest, and the note was detained by the superintendent. The Bank then required C to repay the amount of his loan, which he refused to do unless all his securities were handed over to him. The Bank sued C upon his promissory note: *Held* that he was not entitled to refuse payment until the stolen notes were given up to him. (O. J. Ap.) I. L. R. 5 Cal. 654.

3. The Public Debt Branch of the Bank of Bengal is as much a Government Office as if it were carried on separately under the management of Government officers. The note was therefore stolen while virtually in the hands of the Government, and was, when detained by the superintendent of the Public Debt Office, held by him as the agent of the Government on behalf of the true owner at the time when it was stolen, and the Bank had no right or power to take it in their private capacity out of the hands of the Public Debt Office. *Ib.*

4. When an instrument, such as the note in question, has been stolen, the person from whom it was stolen has a good title to it, not only as against the thief, but as against any person who subsequently becomes the holder, unless such person can prove that the instrument had become negotiable at the time it was stolen, and that he had obtained it *bonâ fide* for value without notice of the theft. In this case the note was stolen whilst in the custody of the Public Debt Office before C had any title to it. The Bank, therefore, as agents for the Government, on behalf of the true owner from whom and on whose behalf they received it, had *primâ facie* a better title than the thief or any one claiming through him; and C, in order to rebut that *primâ facie* case, would have to show that he was a *bonâ fide* holder for value. In order to do so, he would have to prove that the note at the time when it was stolen was a negotiable instrument; and this he had failed to do, as he had not proved that the endorsements prior to that of the thief were genuine. *Ib.*

See Cumulative Sentences 8.
Jurisdiction 18.
Jury 9.
Property Seized by Police 1, 2.
Security 3.
Whipping 2.

Streedhun.

1. The devolution of — from a childless widow is regulated under the Mitacshara by the nature of her marriage; and if the marriage was according to the four approved forms, the — goes to the collateral heirs of her husband. (P. C.) 2 P. C. R. 49 (10 W. R. P. C. 3; 11 Moo. 139). *See* 3 P. C. R. 474; L. R. 5 I. A. 1); I. L. R. 1 All. 661.

2. According to the law of the Benares School, no part of her husband's estate, whether moveable or immoveable, to which a Hindoo widow succeeds by inheritance, forms part of her —; and the text of Katyayana cited must be taken to determine (1) that her power of disposition over both is limited to certain purposes, and (2) that on her death both pass to the next heir of her husband. (P. C.) 2 P. C. R. 124 (9 W. R. P. C. 23; 11 Moo. 487). *See also* 22 W. R. 496.

So also immoveable property inherited by the paternal grandmother from the grandson does not rank as — and on her death devolve as such on her heirs, but devolves on her death on the heirs of the grandson. I. L. R. 1 All. 661.

STREEDHUN (*continued*).

3. Under the Hindoo law a married woman is at liberty to make any disposition she likes of money constituting her — or separate and peculiar property; and if she purchases immoveable property with such —, she has a right to sell that immoveable property. (P. C.) 2 P. C. R. 809 (19 W. R. 292).

4. With respect to property given to a woman by her husband's father's sister's son, the brother, mother, and father are preferable heirs to the husband. I. L. R. 1 Cal. 275.

5. Where a Hindoo lady had received presents of moveable property from her husband from time to time during her life, and after his death, partly out of such property, and partly from funds raised by the mortgage of jewels admitted to be her —, purchases immoveable property: *Held* that that was her —, and that she consequently could dispose of it by will. I. L. R. 1 Mad. 281.

The following is taken from a recent judgment of the Privy Council not yet reported: "It is suggested that where the funds are shown to have come wholly or in part from the husband, and to have been afterwards invested in land by his widow, the same law which governs in the devolution of immoveable estate derived from the husband is to govern that acquisition; but their Lordships cannot find any trace of authority to support such a distinction. It is clearly the law that from the time the funds were given to the widow by the husband they became her —. and that she had full power of disposition over them. Years after the death of the husband she chooses to invest them in land. Can it be contended with any plausibility that that was land which was derived from the husband? Their Lordships can see no ground for establishing this subtle distinction, or for thus arbitrarily interfering with the power of investment and application and disposition which the general law gives to a Hindoo female over her —." *See Sri Rajah Row Venkata Mahapati* v. *Mahipati Suriah Row*, 16th November 1880.

6. *Quære* whether unchastity in a woman incapacitates her from inheriting —. (F. B.) I. L. R. 1 All. 46. *See* I. L. R. 4 Bom. 104.

7. *Semble.* The — of a Hindoo widow should be taken into account in determining whether and to what extent she should have maintenance assigned to her. (O. J. F. B.) I. L. R. 2 Bom. 573.

8. A contract entered into by a Hindoo married woman, jointly with her husband and separately for herself, must, in the absence of special circumstances, be considered as entered into with reference to her —, which is analogous to a woman's separate property in England. (O. J.) I. L. R. 4 Bom. 318.

See **Husband and Wife 4, 6.**
Res Judicata 7.
Shivagunga.
Will 61.

Subordinate Zemindar.

See Oudh Estates 3.
,, Sub-Settlement 3.

Sub-Settlement.

See Oudh Estates 3.

Substitution.

1. Of "must" or "shall" for "may" *See* Limitation (Act XIV of 1859) 14.

See **Account 1.**
Hindoo Law (Inheritance and Succession) 2.
Instalments 6.
Limitation 18.
Mortgage 1, 110, 133.
Municipal 13.
Practice (Appeal) 19, 30.

See **Practice (Parties) 2.**
Service 1, 2.
Will 11.

Succession.

1. The — of a Hindoo is, as a general rule, regulated by Hindoo law, of a Mahomedan by the Mahomedan law, and of an East Indian Christian by the English law; but in every case, for the purpose of determining the *status personalis*, regard must be had to the mode of life and habits of the testator, and to the usages of the class or party to which he belonged. If no specific rule can be ascertained to be applicable to a case, it should be determined according to equity, justice, and good conscience. (P. C.) 2 P. C. R. 324 (13 W. R. C. P. 41; 5 B. L. R. 1; 13 Moo. 277).

2. Act X of 1865 s. 4 does not apply in respect of the moveable property of persons not having an Indian domicile. Thus H M, a British subject, having his domicile in England, married in Calcutta, in April 1866, C a widow, who at the time of the marriage had also an English domicile. C, after her marriage with H M, became entitled as next of kin to shares in the moveable properties of her two sons by her former marriage; these shares were not realised nor reduced into possession by C during her life. C died in 1872 leaving her husband, but no lineal descendants. In March 1874 H M filed his petition in the Insolvent Court, and all his property vested in the Official Assignee. In April 1875 letters of administration of the estate and effects of C were, with the consent of H M, granted to the Administrator-General of Bengal, by whom the shares to which C became entitled as next of kin to her sons were realised. In a special case for the opinion of the Court under chap. VII Act VIII of 1859: *Held* that, the domicile of the parties being in England, the English law was to be applied, and therefore the Official Assignee, as assignee of the estate of H M, was entitled to the whole fund realised by such shares in the hands of the Administrator-General. (O. J.) I. L. R. 1 Cal. 412. *See* I. L. R. 4 Cal. 140.

3. It is not a condition precedent to the application of Act XXI of 1865 s. 5 that the predeceased son of an intestate Parsee shall have left a widow *and* issue. When an intestate Parsee left him surviving a widow, sons, daughters, children of a predeceased son, and the widow of another predeceased son who had died without issue and a posthumous daughter was afterwards born to the intestate: *Held* that such last mentioned widow was entitled to one moiety of the share in the intestate's estate which her husband would have taken had he survived the intestate, and that the other moiety of such share devolved on the surviving issue of the intestate, including the posthumous daughter, and the children of his other predeceased son. (O. J.) I. L. R. 1 Bom. 506.

4. In excluding by Act XXI of 1865 s. 8, from application to Parsees, Act X of 1865 s. 42, which repeals the English rule as to advancement contained in the Statute of Distribution (22 and 23 Car. II c. 10) s. 5, it was not the intention of the Legislature to preserve the last-mentioned rule in force for the Parsee community. (O. J.) I. L. R. 2 Bom. 75.

5. *Semble* that the rule followed by the Courts of Equity in England, whereby, notwithstanding the provisions of the Statutes of Limitation, the share of one of the next of kin in the estate of an intestate, while in the hands of the Administrator, is liable for a debt due by the next of kin to the deceased, though barred at the date of the death of the latter, is to be applied in the Courts of British India. The English rule, with regard to a husband's rights over ornaments given to his wife by her father, applied to Parsees. (O. J.) *Ib.*

6. Under the Parsee — Act XXI of 1865, widows and children rank before brothers or sisters. I. L. R. 4 Bom. 537.

7. S. 7 and sch. 2 art. 2 of the above Act is applicable only where the deceased leaves neither lineal descendants, nor a widow or widower. *Ib.*

See **Benamee 5.**
Gift 2.
Hindoo Law (Inheritance and Succession).
Mahomedan Law 1, 2, 4, 5, 6, 10, 11, 12, 13.

SUCCESSION (*continued*).

See **Oudh Estates 10.**
Res Judicata 32.
Slave 1.
Zemindaree 1, 2, 3, 5.

Sudder Court.

See **Jurisdiction 2.**
Limitation (Act IX of 1871) 42.
Practice (Review) 1.

Summary Settlement.

See **Oudh Estates 2, 13.**

Summary Trial.

1. An offence under Act XXI of 1856 s. 49 can be tried summarily under Act X of 1872 s. 222, the confiscation provided by the former section being merely a consequence of the conviction, and not forming part of the punishment for the offence. (F. B.) I. L. R. 3 Cal. 366.

See Jurisdiction 16.
Practice (Appeal) 14.
Unlawful Assembly 1.

Summons.

See Appearance 1.
Contempt of Lawful Authority of Public Servant 1.
Ex-Parte 7.
Limitation 23.
Practice (Suit) 23.
Service 1, 2, 3, 4, 5, 6, 7.
Small Cause Court 10.
Witness 5, 6.

Sunnud.

1. Where a — by way of summary settlement of land revenue has been granted by Government under Act VII of 1863 (Bombay), Government cannot reform or set it aside, without the assent of all parties interested therein. To do so, would be an assumption by Government of the function of a Civil Court. I. L. R. 4 Bom. 367.

2. A Civil Court cannot, on the ground that Government has by mistake granted such a — to a person not the owner of the land, reform or set aside the —. Act VII of 1863 (Bombay) s. 7 renders the quit-rent, fixed by the —, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the —, subject to the quit-rent, fixed by the —, and payable to Government; and such grantee will be declared to have taken the — as a trustee for the rightful owner. *Ib.*

3. Where Government had granted seven *sunnuds* to certain *garasias* in respect of lands, part of which had been previously sold by the *garasias*, and Government had attempted to revoke and cancel those *sunnuds*, and had subjected the lands to a full assessment, on the ground that the *garasias* were not entitled to any of the said lands and that the *sunnuds* had been granted by mistake : *Held* that such attempted revocation, cancellation, and re-assessment were void and of no effect, and that the grantees were entitled to hold the lands on the terms mentioned in the *sunnuds*, but so far as regarded the sold portion of the said lands, in trust for the vendees thereof and their heirs, representatives, and assigns. *Ib.*

4. *Quære* whether a Civil Court can give relief, either by reforming or cancelling such *sunnuds*, against mistakes, other than those relating to ownership, which may be found to exist in the *sunnuds*. *Ib.*

See **Enam 2.**
Grant 4, 7.
Hindoo Law (Inheritance and Succession) 17*a*.
Illegitimate 3.
Landlord and Tenant 7.
Meerasee 7, 8.
Oudh Estates 5, 12, 13.
Timber 8.
Zemindaree 3.

Supreme Court.

See **Contempt of Court 7.**
Endowment 32.
Jurisdiction 20.
Limitation (Act IX of 1871) 25.
Mortgage 10.
Partition 12.

Surety.

See **Principal and Surety.**

Surburakar.

See **Attachment 6.**

Surrender.

See Bailment 4.
Hindoo Widow 60.

Survey.

1. Where the Privy Council considered the thakbust proceedings preferable to a local investigation by a Sudder Ameen. (P. C.) 2 P. C. R. 851 (19 W. R. 361).

2. In a suit for possession, the only evidence for the plaintiff was a thakbust map which had been signed as correct by predecessors in title of both the plaintiff and defendant, and on which the lands in dispute were laid down as the lands of the plaintiff's predecessor : *Held* that the evidence was not sufficient to justify a decree for the plaintiff. I. L. R. 5 Cal. 212.

3. The presumption under Act I of 1872 in regard to the accuracy of a map made under the authority of Government, is in no way affected by the fact that such map has been superseded by a later — map made under the same authority, and by an order of the Board of Revenue. I. L. R. 5 Cal. 822.

See **Boundary 1.**
Churs 20.
Landlord and Tenant 5, 6.
Possession 2, 3.

Survivorship.

See **Hindoo Law (Adoption) 86.**
,, (Coparcenary) 22.
,, (Inheritance and Succession) 18, 31, 44.
Hindoo Widow 4, 17.
Limitation (Act XIV of 1859) 18.
Will 60.

Suttee.

See **Murder 9.**

Tal.

See **Watercourse 2.**

Talabda Koli Caste.

See Hindoo Law (Adoption) 36.

Talook.

1. As in this case the proceedings which were taken by the Government showed that they did not cancel the plaintiff's tenure, it was held that the defendant, who had purchased the zemindaree rights from the Government, could not eject the plaintiffs, who were entitled to retain possession subject to a liability to enhancement. (P. C.) 2 P. C. R. 306 (13 W. R. P. C. 24 ; 13 Moo. 317).

2. Exposition of the law as it stood before and after Reg. XI of 1822 regarding the ejectment of a talookdar, and the cancelment of his —, by an auction-purchaser at a Revenue sale. (P. C.) *Ib.*

3. Where the Government by a grant made over an entire — to a person, and subsequently formally sanctioned his possession by a Settlement : *Held* that neither act of Government could be disputed on the ground that the Government had acted under a mistake in making over the whole, instead of a part of the talook. (P. C.) 2 P. C. R. 314 (13 W. R. P. C. 31 ; 4 B. L. R. P. C. 36).

4. Succession to Maharajah Sir Man Singh's —. *See* Oudh Estates 10.

5. Succession to Kablas Koer's —. *See* Oudh Estates 12.

See Benamee 2.
Cesses.
Chillaree.
Enhancement 4, 7, 9, 24, 33.
Grant 4.
Jurisdiction 1.
Limitation 14.
Mortgage 116.
Oudh Estates 4, 9.
Putnee.
Res Judicata 2.
Sheriff 7.
Talookdar.

Talookdar.

See Oudh Talookdars Relief.
Registered Talookdar.

Tank.

1. The principle that a man, in exercising a right, may be liable, without negligence, for injury done to another, was held inapplicable to the statutory duty imposed on zemindars of maintaining tanks for purposes of irrigation, as raised in a case where two tanks had burst on defendant's land from influences beyond plaintiff's control. (P. C.) 3 P. C. R. 36 (22 W. R. 279 ; 14 B. L. R. 209 ; L. R. 1 I. A. 364). *See also* I. L. R. 3 Cal. 776.

See Limitation (Act XV of 1877) 45.
Pond.

Tarwad.

See Karanavan 1, 4, 5.

Taxing Master.

See Limitation (Act IX of 1871) 25.

Tax.

See House Tax.
Income Tax.
Kanara 1.
Land Tax.
See Municipal 4.
Profession Tax.
Rates.
Road Cess.

Tea Garden.

See Arbitration 8.
Master and Servant 1.

Telegram.

See Arbitration 8.
Documents 3.

Temple.

1. Pagoda. *See* Endowment 13, 23, 30 ; Hindoo Law (Religious Ceremonies) 2 ; Limitation (Act IX of 1871) 37

See Criminal Breach of Trust 1.
Endowment 12, 14, 18, 20, 21, 34.
Hereditary Office 5.
Limitation (Act IX of 1871) 66.
Prostitution 2.

Tenant.

1. Tenant-in-common. *See* Co-Sharers 1 ; Enhancement 21 ; Hindoo Law (Coparcenary) 18.

2. Cultivating —. *See* Mesne Profits 12 ; Registration 13.

3. Ex-proprietary —. *See* Jurisdiction 34.

4. Tenant-at-will. *See* Landlord and Tenant 1, 2 ; Lease 11.

5. — from year to year. *See* Landlord and Tenant, 1, 2.

6. — for a term of years. *See* Landlord and Tenant 1.

7. Koorfa under-tenant. *See* Transferable Tenure.

8. Joint —. *See* Enhancement 21 ; Hindoo Law (Inheritance and Succession) 39.

9. Occupancy —. *See* Ejectment 4 ; Estoppel 19 ; Jurisdiction 43 ; Limitation 37 ; Transferable Tenure 2.

10. Government ryot. *See* Right of Occupancy 13.

See Landlord and Tenant.
Meerasee 3.
Revenue Settlement 2.

Tender.

1. In a suit to recover Rs. 1,323-15-6, the balance of the price of goods sold, on which an account had been come to between the parties, it appeared that the defendant had tendered before suit a sum of Rs. 1,043-5, stating in the letter of — that the sum so tendered was the only sum due. At the trial the plaintiffs obtained a decree for the full amount claimed by them : *Held* that the — was bad, and therefore that the plaintiffs were entitled to costs. (O. J. Ap.) I. L. R. 3 Cal. 468.

2. The landlord of a house through his agent sent in rent bills to his lessee. The lessee gave the agent a cheque payable to her attorney for the amount demanded. The attorney realized the amount of the cheque and gave the money to the agent, who tendered it to the landlord's attorney, who refused to accept, and the money was returned to the lessee's attorney : *Held*, in a suit for the rent, that under the circumstances, the — amounted to payment ; and that, although as a general rule the amount of a — not accepted ought to be paid into Court in order to entitle the defendant to costs, yet that, as the — in this case amounted to payment, the defendant was entitled to have the suit dismissed with costs. (O. J.) I. L. R. 4 Cal. 572.

See Accomplice 1, 2.
Kubooleut 1.
Pottah 5.
Small Cause Court 23.

Theft.

1. Possession of wood by a Forest Inspector, who is a servant of Government, is possession of the Government itself; and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, constitutes — within the meaning of s. 378 Penal Code, if that consent was unauthorised or fradulent. (Cr.) I. L. R. 1 Bom. 610.

2. A sought the aid of B with the intention of committing a — of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. On the prosecution of A for —: *Held* that, as the property removed was so taken with the knowledge of the owner, the offence of — had not been committed (Cr.) I. L. R. 4 Cal. 366.

See Attachment 15, 16.
Cumulative Sentences 1.
Jurisdiction 18, 22.
Jury 9.
Stolen Property 1, 2, 3, 4.
Whipping 2.

Timber.

1. In a suit for damages for conversion by defendants of certain — belonging to plaintiff, the principle of estimating the damages adopted was not only to take the value of the — at the place where the principal, if not the only, market for it existed as the basis of the calculation; but to deduct from the price at which the plaintiff could have there sold it, what it would have cost him to bring it to the market. (P. C.) 3 P. C. R. 525 (L. R. 5 I. A. 130; I. L. R. 4 Cal. 116).

2. In a suit for damages for the obstruction by the defendant's agent of the plaintiff in the exercise of his alleged right to remove — from certain forests in Burmah: *Held* that the acts complained of could not be treated as the wrongful acts of a servant or agent committed in the course of his service, because it was not shown that at the time in question the alleged agent was a servant or agent for the purpose of working in the forest on behalf of the defendants, or of doing any class of acts analogous to those complained of, nor was there any proof of the defendants having ever knowingly adopted or ratified those acts, or indeed of the acts having been committed for their benefit. (P. C.) *Ib.*

3. In a suit for a share of the proceeds of certain — alleged to have been cut down by the Government in a village of three-fourths of which plaintiff claimed to be proprietor: *Held* that plaintiff's sunnuds merely gave him a hereditary right, as Collector of Revenue, to the perquisites arising out of certain cesses or dues, but no proprietary right in the village, no interest in the soil, and no right to the —; nor was he entitled to the proprietorship of the soil of the village by reason of his *matani* or hereditary *khoti*, as it was clear that the proprietorship of the soil was not vested in every *khot*, and the clauses of his own agreement negatived such a right. (P. C.) 3 P. C. R. 700 (L. R. 7 I. A. 55; I. L. R. 4 Bom. 264).

See Contract 4.
Municipal 16.

Time.

1. For objection as to value of appeal before Privy Council. *See* Privy Council 5.
2. How to calculate — for appealing to Privy Council. *See* Privy Council 6.
3. Of lunacy contemplated by Act XXXV of 1858. *See* Lunatic 1.
4. From which to date title of party taking out a second execution. *See* Attachment 5.
5. Expiry of — for foreclosure. *See* Mortgage 23, 83.
6. From which year of grace runs. *See* Mortgage 27.
7. For redemption. *See* Mortgage 36, 41, 42, 84, 85, 135.
8. Giving —. *See* Contract 16; Principal and Surety 4, 7.
9. For objection as to non-observance of formalities enjoined by Act VIII of 1859 s. 239. *See* Attachment 8.
10. For grant of letters of administration with will annexed. *See* Will 22.
11. Of accrual of cause of action on promissory note payable on demand. *See* Limitation (Act IX of 1871) 7.
12. For deposit under Act VI of 1874 s. 11. *See* Privy Council 39.
13. For admitting a review of judgment. *See* Practice (Review) 10.
14. Extension of — for appeal under Act XXVIII of 1860 s. 25. *See* Boundary Marks 1.
15. For payment. *See* Mortgage 54; Practice (Appeal) 15; Pre-emption 1, 15; Puttee 7.
16. For correcting memorandum of appeal under Act VIII of 1859 s. 336. *See* Practice (Appeal) 11.
And for supplying deficiency in stamp duty on the same under Act X of 1877 s. 54 (*b*). *See* Practice (Appeal) 11.
17. For objection as to non-notice of suit. *See* Municipal 6.
18. For objection as to defect of parties. *See* Enhancement 17; Municipal 8.
19. For joinder of parties. *See* Partnership 14.
20. For claiming right of pre-emption. *See* Pre-emption 4.
21. For pleading limitation. *See* Limitation (Act XIV of 1859) 24.
22. For notice of substituted service of summons. *See* Service 2.
23. Extension of — for defendant to appear and defend. *See* Practice (Suit) 8.
24. For objection as to non-registration. *See* Registration 29.
25. For furnishing security for costs of appeal. *See* Practice (Appeal) 15.
26. For delivery of goods. *See* Railway 4.
27. For removal of goods. *See* Railway 5.
28. Extension of — for giving notice of appeal. *See* Joint Stock Company 5.
29. For compounding or withdrawing charge. *See* Adultery 1.
30. For objection against insolvent's right to sue. *See* Insolvency 13.
31. For filing affidavit. *See* Affidavit 1.
32. For signature by attesting witnesses to a will. *See* Will 58.
33. For giving sanction to prosecute. *See* Criminal Proceedings 18.
34. For filing supplemental written statement. *See* Written Statement 2.

See Ancestral Property 5.
Contract 11.
Decree 4.
Estoppel 9.
Ex-Parte 2.
Interest 1, 4, 7.
Lease 3.
Limitation (Act IX of 1871) 18.
Majority 1.
Mesne Profits 3, 6.
Mortgage 21*a*.
Nuisance 1.
Remand 1.
Transportation 1.
Will 20.

Tipperah.

Succession to the — Raj. (P. C.) 2 P. C. R. 243 (12 W. R. P. C. 21; 12 Moo. 523; 3 B. L. R. P. C. 13).

Tirhoot.

Succession to the zemindaree of —. (P. C.) 2 P. C. R. 20 (6 Moo. 164).

See Churs 18.
Hindoo Law (Inheritance and Succession) 8.
Raj 1.

Tirpuntal.

See Endowment 11.

Title.

1. A declaration of — may be made upon proof of 12 years' adverse possession. Such declaration, however, cannot be given on a — not distinctly stated in the plaint or in the issue. I. L. R. 2 Cal. 418.

2. Covenants for —. *See* Covenant 1.

See Benamee 1.
Certificate 3, 4, 10, 11.
Cesses.
Churs 1, 2, 3, 12, 15, 16.
Co-Sharers 4.
Damages 4.
Declaratory Decree.
Estoppel 11, 19.
Evidence 13.
,, (Documentary) 13.
Hindoo Widow 54.
Husband and Wife 11, 14.
Insolvency 5.
Julkur 1, 3.
Jurisdiction 47, 50.
Lakheraj 1, 2.
Land Dispute 2.
Landlord and Tenant 5, 6, 7, 8, 9.
Lien 5.
Limitation 7, 11, 13, 28, 37.
,, (Act XIV of 1859) 2, 11, 16.
,, (Act IX of 1871) 4, 27, 31, 100.
,, (Act XV of 1877) 84.
Manager 1.
Meerasee 7, 8.
Mokurruree 1.
Mortgage 10, 11, 12, 13, 24, 43, 100, 104, 124, 128, 130, 131, 132.
Onus Probandi 1.
Oudh 4.
,, Estates 1, 8, 11.
Partnership 18.
Partition (Butwarra) 1.
Plaint 1.
Possession 1, 3, 4, 5, 6, 7*a*, 8, 9, 11, 12, 13, 14, 15, 16, 19, 20, 21.
Practice (Appeal) 30.
Prescription.
Public Thoroughfare 1.
Registration 40.
Relief 1, 2.
Rent 6.
Res Judicata 10, 15, 16, 24, 25, 27, 28, 33, 35, 38, 39, 41.
Revenue Settlement 3.
Reversioner 1.
Sale (in Execution of Decree) 21, 22, 23, 24, 29.
Sheriff 1, 2, 5.
Small Cause Court 9, 10, 24.
Special Appeal 5, 6.
Splitting Cause of Action 2.
Stamp Duty 4.
Stolen Property 4.
Trust 9.
Vendor and Purchaser 2, 4, 7.
Warranty 1.
Will 5, 39, 42, 57.

Title Deeds.

1. A suit to recover —, although it may involve a question of title, is not a suit to obtain possession of land, or to deal in any way with the land itself within the meaning of s. 11 of the Charter. In a suit to recover — and other property the defendant claimed a certain sum as being due to him, and in the plaint the plaintiff offered to pay the defendant all that was due up to that date, provided the deeds and property were given up. The defendant, however, claimed a right to hold them under an adverse title: *Held* that the defendant was only entitled to interest up to the date of the plaint and not up to the date when the money due was actually paid. (O. J. Ap.) I. L. R. 4 Cal. 322.

See Jurisdiction 47.
Mortgage 43.
Registration 40.

Toda Giras Huk.

0. Whatever may have been the origin of the —, it must be assumed to be now a right to receive an annual payment which has a legal foundation and of which the enjoyment is hereditary: and the liability to make the payment is not personal but attaches to the enamdar *virtute tenuræ*. (P. C.) 2 P. C. R. 923 (21 W. R. 178; 13 B. L. R. 182; L. R. 1 I. A. 23). *See also* recent P. C. judgment (not yet reported) in *Maharaval Mahasingji Jeysingji* v. *Government of Bombay*, 8th March 1881.

1. — is within the scope of the Pensions Act XXIII of 1871; and a suit in respect of them cannot be instituted without the certificate required by s. 6. I. L. R. 1 Bom. 203. *See also* recent P. C. judgment (not yet reported) in *Maharaval Mahasingji Jeysingji* v. *Government of Bombay*, 8th March 1881.

2. Where a mortgagee of — had, before the date on which the Act came into operation, obtained a decree for the recovery of his mortgage-debt from the mortgaged huks and from the mortgagor personally, and a fresh suit was necessary to enforce execution of that decree against those huks: *Held* that the Act did not apply to such fresh suit. *Ib.*

3. *Semble* that the word "right" in s. 3 of the Act is equivalent to the word *huk* in its restricted sense of "allowance" or "fee." *Ib.*

4. A — is not exempted from attachment under a decree of a Civil Court by Act XXIII of 1871 s. 11. I. L. R. 4 Bom. 432.

5. The word "pension" in s. 11 of the above Act is used in its ordinary and well-known sense, *viz.* that of a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite, or office, but on account of past service or particular merits or as compensation to dethroned princes, their families and dependants. A — does not come within the meaning of the word "pension," which denotes something different from "a grant of money or land revenue" as defined in s. 3 of the Act. *Ib.*

6. A suit against Government, upon an alleged agreement by Government to pay moneys from its treasury in lieu of —, falls within the prohibition, in Act XXIII of 1871 s. 4, to Civil Courts to entertain any suit relating to any grant of money made by the British Government, whatever may have been the consideration for such grant, and whatever may have been the nature of the payment, claim, or right for which such grant may have been substituted. I. L. R. 4 Bom 437.

Affirmed by P. C. in recent judgment, not yet reported, 8th March 1881.

7. Cessation of the collection of — by Government. *Ib.*

8. *Quære* whether Government bound itself to act perpetually as agent of the girasias in the collection of —. *Ib.*

9. *Quære.* Whether the Civil Courts would compel the specific performance of such an agreement. *Ib.*

10. Act XXIII of 1871 s. 4 prohibits the Civil Courts from entertaining a suit against Government upon an alleged agreement by it to pay moneys from its treasury in lieu of —. I. L. R. 4 Bom. 443.

See Limitation (Act XIV of 1859) 10.

Toll.

See Municipal 15.

Trade.

1. Ancestral trade. *See* Guardian and Minor 30.

See Caste 1.
Hindoo Law (Coparcenary) 16, 27, 28, 29, 30.
,, Widow 45.
Insolvency 15.
Partnership 11.
Res Judicata 9.
Restraint of Trade.
Small Cause Court 17.
Trade Mark.

Trade Mark.

1. An injunction was granted to restrain the defendants from marking their cloth with figures or numbers in imitation of the plaintiffs.—(O. J. Ap.) I. L. R. 3 Cal. 417.

2. *Semble.* There may be a right to exclusive use of a — by traders who are importers only. (O. J. Ap.) *Ib.*

Transfer.

1. Transfer of suit or appeal. *See* High Court 38; Jurisdiction 11; Practice (Suit) 2.

2. Transfer of decree. *See* Execution of Decree 3, 4, 7, 8, 12, 17, 20, 35, 38, 47, 48; Limitation (Act IX of 1871) 50; Receiver 1; Special Appeal 7.

3. Transfer of Criminal case. *See* Criminal Proceedings 4; High Court 4, 5, 6, 7; Jurisdiction 42.

4. Transfer of Officer. *See* Jurisdiction 16.

5. Transfer of Shares. *See* Bank of Bengal 1; Insolvency 6; Limitation (Act IX of 1871) 14; Preemption 14.

6. Transfer of possession or control. *See* Prostitution 1.

7. Transfer of Registry by Revenue Authority. *See* Mutation of Names.

8. Transfer of proprietary rights. *See* Mortgage 58; Sale 6; Vendor and Purchaser 5.

9. Transfer of title. *See* Possession 12; Will 39.

10. Transfer of property not in possession. *See* Conveyance (Transfer and Assignment) 1.

11. Transfer of mortgaged property. *See* Conveyance (Transfer and Assignment) 2.

12. Transfer of right of occupancy. *See* Right of Occupancy 6.

13. Transfer of tenant's liability to pay rent. *See* Landlord and Tenant 4.

14. Transfer of Government from E. I. Co. to Crown. *See* Will 45.

15. Transfer of assets from one Company to another. *See* Joint Stock Company 6.

16. Transfer of contract. *See* Sale 7; Vendor and Purchaser 9.

See Conveyance (Transfer and Assignment).
Transferable Tenure.

Transferable Tenure.

1. The *jummaee* rights of a *koorfa* under-tenant are not transferable without the consent of the ryot landlord. I. L. R. 4 Cal. 135.

2. The proviso to the last clause of Act XVIII of 1873 s. 9, limiting the right to a heritable and —, refers only to tenants with a right of occupancy and not to tenants at fixed rates. (F. B.) I. L. R. 2 All. 145.

See Endowment 28.
Meerasee 4, 5.
Mokurruree 9.
Oudh Estates 8, 12.
Right of Occupancy 3, 6, 9.

Transportation.

1. With reference to ss. 59 and 377 Penal Code, when an offence is punishable either with — for life or imprisonment for a term of years, if a sentence of — for a term less than life is awarded, such term cannot exceed the term of imprisonment. (F. B. Cr.) I. L. R. 1 All. 43.

See Murder 6.
Whipping 1.

Trans-shipment.

1. A — permit under Act VIII of 1878 s. 128 does not, like a bill of lading, represent the goods mentioned or give any lien upon or control over them. (O. J.) I. L. R. 4 Bom. 447.

Trees.

See Landlord and Tenant 11, 12.
Lease 9.
Small Cause Court 7.

Trespasser.

1. A — on the land of another should, in estimating the mesne profits which the owner of the land is entitled to recover from him, be allowed such costs of collecting the rents of the land as are ordinarily incurred by the owner, where such — has entered or continued on the land in the exercise of a *bonâ fide* claim of right; but where he has entered on the land without any *bonâ fide* belief that he was entitled so to do, the Court may refuse to allow such costs, although he may still claim all necessary payments, such as Government revenue or ground rent. (F. B.) I. L. R. 1 All. 518. *But see* next case.

2. Where a person has wrongfully taken possession of an estate and held it adversely to the true owner, and has, during his possession, paid certain sums for Government revenue on the supposition that he was the lawful owner (being however, in reality, nothing more than a — and wrong-doer), he is not entitled to recover, as against the true owner, any sums so paid even though such payments may have enured to the benefit of the true owner, but must be content to bear the burden of his own wrong. I. L. R. 4 Cal. 566. *But see* preceding case.

See Attachment 15.
Churs 20.
Criminal Trespass.
Jurisdiction 34.
Landlord and Tenant 11.
Limitation 11.
Mortgage 56.
Putnee 2, 10.
Right of Occupancy 6.
Sheriff 2.

Trust.

1. The very principle of a resulting — is that the property has been purchased with money belonging to another with an implied — that it should belong to that other person to whom the money also belonged. But if it was the intention of the person to whom the money belonged that there should be no such —, no such implied — can arise by implication. (P. C.) 2 P. C. R. 543 (17 W. R. 259; 14 Moo. 433).

2. Trusts of various kinds have been recognised and acted on in India in many cases. (P. C.) 2 P. C. R. 692 (18 W. R. 359; 9 B. L. R. 377; L. R. I. A. Sup. 47).

3. Under the guise of an unnecessary — of inheritance, a testator cannot indirectly create beneficiary estates of a character unauthorized by law, and which could not directly be given without the intervention of the —. (P. C.) *Ib.*

4. A — cannot be said to fail because one of the trustees had renounced or had not acted, where a — distinctly

TRUST (*continued*).

provides for the case of a trustee not acting and gives a directing power to fill up the number of trustees when required. (P. C.) *Ib.*

5. J, as the executor of his deceased father S, obtained a decree which he held in — for S's heirs, namely, himself and brothers. One of the brothers (H) died, leaving J and M his executors. M then sold to J the interest of H's son for an inadequate consideration: *Held* that, according to the rules of equity, the sale could not stand, but that J was bound to return to H's sons their share in that estate, upon receiving back the purchase-money; and that the sale was equally invalid against any other person for whose benefit the trustee (J) may have purchased secretly in his own name, as it would be against the trustee himself. (P. C.) 3 P. C. R. 52 (23 W. R. 6; 14 B. L. R. 276; L. R. 2 I. A. 18).

6. Transfer of Trusteeship. *See* Endowment 23, 24.

7. Sale of Trusteeship. *See* Endowment 24.

8. Where, on the death of a —, his widow and principal heiress according to the Mahomedan law was admitted to a settlement of the villages held by him, and continued in possession for 19 years when a regular settlement took place with her upon the ground that her long possession was adverse to the rights of the co-heirs: *Held* that the widow could not be fixed with a — except upon clear proof of her consent to the acceptance of that —; but that, if it were clearly made out that she held under a —, an enlargement of her proprietary interest in the villages upon that regular settlement would not have made her less a trustee, and she would have taken whatever additional interest she thus acquired subject to the original —. (P. C.) 3 P. C. R. 623.

9. B and D, father and son, were jointly entitled to the moiety of certain property; E, B's brother, and K, E's son, being jointly entitled to the other moiety. B and D were transported for life. Thirty years afterwards (B having meantime died) D returned from transportation, and asserted his right to a moiety against a person deriving his title from E and K, who had taken possession of the whole: *Held*, looking to all the circumstances of the case, that E and K had taken possession subject to a constructive — in favor of B and D, and that accordingly D was entitled to assert his right, and no limitation could affect it. I. L. R. 2 All. 361.

10. In 1840 the purchasers and recorded proprietors of a four biswas share of a certain village caused a statement to be recorded in the village record-of-rights to the effect that B claimed to be the proprietor of a moiety of such share, and that they were willing to admit his right whenever he paid them a moiety of the sum which they had paid in respect of the arrears of revenue due on such share. In 1843 M purchased such share and became its recorded proprietor. In 1877 K, the son of B, sued the representative of M, for possession of a moiety of such share, alleging, with reference to the statement recorded in the record-of-rights that such moiety had vested in M's assignors in trust to surrender it to B or his heirs on payment of a moiety of the sum they had paid on account of revenue, and paying into Court a moiety of such sum: *Held* that that statement could not be regarded as evidence of the alleged —, and that, assuming that the alleged — existed, the suit was barred by limitation, M having purchased without notice of the — and for valuable consideration. I. L. R. 2 All. 460.

11. A village administration-paper which provides for the surrender to absent shareholders on their return to the village of the lands formerly held by them does not necessarily constitute a valid — in their favor, although it may be evidence of such a —. I. L. R. 2 All. 493.

12. Where a village administration-paper provided for the surrender to certain absent shareholders on their return to the village of the lands formerly held by them, but did not contain any declaration of a — as existing between such absent shareholders and the occupiers of their lands at the time such administration was framed: *Held* that the administration-paper could not be regarded as evidence of a pre-existing — between such persons nor as an admission of such a — by such occupiers. *Ib.*

See Benamee 2, 12, 15.
Bill of Exchange 1.
See Breach of Trust.
Co-Sharers 11.
Deposit 2.
Endowment.
Estoppel 10.
Hindoo Law (Coparcenary) 2.
„ (Partition) 8.
Husband and Wife 11.
Insolvency 7, 9.
Jurisdiction 15.
Karanavan 2.
Limitation (Act IX of 1871) 14, 26, 32, 74, 84.
„ (Act XV of 1877) 39, 40.
Misrepresentation 1.
Mortgage 32, 105.
Oudh Estates 1, 9, 11, 12, 13.
Partition 29.
Port Trust (Bombay).
Practice (Suit) 19.
Religious or Charitable Trusts.
Settlement 1.
Will 10*a*, 25, 31, 37, 38, 46, 50, 51, 53, 63.

Tullubana.

See Dismissal of Suit or Appeal 1.

Tullubi-Bromotur.

See Enhancement 12.

Ultra Vires.

See Contagious Diseases 1.
Discharge 1.
Husband and Wife 14.
Joint Stock Company 2, 8.
Jurisdiction 9, 10, 19, 20, 33.
Libel 1, 2, 4.
Municipal 4.
Privy Council 28, 29, 38.
Registration 44.
Sale (in Execution of Decree) 17, 23, 24, 25, 51.
Sheriff 1, 2.
Small Cause Court 4, 19.
Will 10*a*.

Unchastity.

See Hindoo Law (Inheritance and Succession) 38.
„ Widow 11, 22, 23, 31, 48, 52.
Streedhun 6.

Uncle.

See Grand Uncle.
Hindoo Law (Inheritance and Succession) 5.
„ Widow 48.
Paternal Uncle's Widow.

Unconscionable Bargain.

See Contract 15.
Interest 11.

Under Tenure.

1. Tenants intermediate between proprietors and ryots are subject to the jurisdiction of the Collector under Act X of 1859, which contemplates under-tenants as distinct from ryots, and contains provisions relating to both classes. (P.C.) 2 P. C. R. 92 (9 W. R. P. C. 3; 11 Moo. 433).

2. In a suit to avoid an — by the purchasers at an auction-sale for arrears of Government revenue, the defendants contended that the tenure was created prior to the Permanent Settlement, and that some portion of the lands comprised in it were covered with permanent structures and improvements, and that accordingly it was protected under Act XI of 1859 s. 37 exceps. 1 and 4; but the Lower Court gave a decree to the plaintiffs and annulled the —: *Held* that, notwithstanding a party may fail to show that his tenure was created prior to the Permanent Settlement, he is still entitled to the benefit of the 4th exception in respect of any permanent structures that may be upon his holding. I. L. R. 3 Cal. 293.

3. A, a judgment-creditor, having obtained two decrees, one for money, the other for the rent of certain tenures, sold his debtor's right and interest in the tenures in execution of his money-decree, and afterwards in execution of his decree for rent again put up for sale the same tenures. At the second sale, B became the purchaser of whatever could pass under such sale. A subsequently sued and obtained a decree against B for arrears of rent that had become due in respect of the said tenure since the last supposed sale to him, and in execution of such last mentioned decree again attached the tenures. On the intervention of third parties, the tenures were released from attachment. A having applied to levy execution on other immoveable properties of B: *Held* that the tenures having been released from attachment, A was not entitled, under Act VIII of 1869 (Bengal) s. 61, to proceed against the other immoveable property of B, it being open to him to show by a regular suit that the tenures were liable to be sold in execution of his decree, and further, that upon the facts of the case he had disentitled himself to any equitable relief. I. L. R. 3 Cal. 712.

See Ejectment 3.
Enhancement 1, 12.
Limitation 7, 15.
,, (Act IX of 1871) 82.
Oudh Sub-Settlement 2.
Sale (in Execution of Decree) 10, 29, 35.
Transferable Tenure 1.

Undue Advantage.

See Contract 5.

Undue Influence.

See Deed of Sale 2, 7.

Unlawful Assembly.

1. No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while a member of an —, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon and so to give himself jurisdiction to try the case summarily, and then by inflicting a sentence of imprisonment not exceeding three months to deprive the prisoner of his right of appeal. (Cr.) I. L. R. 4 Cal. 18.

See Evidence (Admissions and Statements) 12.
Jury 10.

Unnatural Offence.

See Transportation 1.

Urcadu.

Succession to the impartible zemindaree of — in Tinnevelly. (P. C.) 2 P. C. R. 603 (17 W. R. 553; 12 B. L. R. 396; 14 Moo. 570; L. R. I. A. Sup. 1).

Usage.

See Custom.

Use and Occupation.

See Putnee 10.
Rent 4.

Usury.

1. Reg. XV of 1793 ss. 8 and 9 forbid the maintenance of any suit arising out of an usurious transaction. (P. C.) 2 B. L. R. P. C. 69.

See Ancestral Property 1.
Costs 6.
Interest 15.
Mortgage 34.

Vacations.

See Limitation 32, 50.
,, (Act IX of 1871) 44, 70.
,, (Act XV of 1877) 19
Privy Council 41.

Vaishya.

See Hindoo Law (Adoption) 41.
Illegitimate 4.
Lingayat 1.

Vakalutnamah.

See Attorney and Client 2.
Stamp Duty 9.

Vakeel.

See Pleader.

Valuation.

See Sale 9.

Value of Goods.

See Attachment 14, 15.
Distraint 1.
Railway 3, 8.

Value of Suit or Appeal.

1. The law may lay down, for purposes of revenue, certain rules for the valuation of suits; but such valuation cannot be accepted as a criterion of the actual amount or value of the claim upon which the jurisdiction of a Court depends. The actual value of the estate to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff, is the value of the subject-matter. I. L. R. 1 Bom. 538.

2. For the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market value of the subject-matter of the suit, and not according to the special rules applicable to valuation fixed in Act VII of 1870. I. L. R. 1 Bom. 543.

Value of Suit or Appeal (*continued*).

The valuation of suits, for the purpose of jurisdiction, is perfectly distinct from their valuation for the fiscal purpose of Court fees. Therefore Court Fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction. (F. B.) I. L. R. 4 Bom. 515.

3. Where a person has preferred a claim to property attached in execution of a decree, on the ground that such property is not liable to such attachment, and an order is passed against him, and he sues to establish his right to such property: *Held* that the value of the subject-matter in dispute in such suit, for the purposes of jurisdiction, will be the amount of such decree. I. L. R. 2 All. 799.

See Court Fees 1, 5, 6, 7, 18, 19.
Criminal Proceedings 11.
Deccan Agriculturists Relief 6.
Declaratory Decree 12, 14.
Ejectment 6.
Execution of Decree 40.
Jurisdiction 40, 49, 51, 52, 58.
Mortgage 78, 74, 115.
Practice (Appeal) 20.
Privy Council 5, 37.
Rent 6.
Res Judicata 33.
Small Cause Court 7, 8, 25, 32.
Special Appeal 6.

Vania Caste.

See Nagar Vissa Vanias.

Variation.

See Evidence 8, 9.
Instalments 6.
Julkur 9.
Mortgage 42, 124.
Practice (Appeal) 29.
,, (Suit) 21.
Res Judicata 5.
Special Appeal 6.

Vatandar.

See Hereditary Office 1, 3, 6, 7, 8, 9.

Vegayanimapet.

Succession to the zemindaree of —. *See* Hindoo Law (Inheritance and Succession 29).

Vendor and Purchaser.

1. Where a vendor sells that of which he has not possession, and to which he may never establish a title, the deed of sale can only be evidence of a contract to be performed *in futuro*, and upon the happening of a contingency of which the purchaser may claim a specific performance if he comes into Court showing that he has himself done all that he was bound to do; the contract sued on (which was in consideration of funds advanced to carry on a suit) being a speculative, not to say a gambling, one. (P. C.) 2 P. C. R. 225 (12 W. R. P. C. 6; 12 Moo. 300; 2 B. L. R. P. C. 111). *See also* (P. C.) 2 P. C. R. 616 (18 W. R. 140; 11 B. L. R. 86); 21 W. R. 101.

2. Where a Hindoo executes a deed of sale in favor of another at a time when he has no title to the property, his subsequently becoming entitled as heir would not make the deed of sale good. (P. C.) 2 P. C. R. 383 (15 W. R. P. C. 12; 6 B. L. R. 501).

3. Reason for the rule of equity that a purchaser of property, though for valuable consideration, and taking the legal estate, yet with notice of a prior incumbrance, purchases subject to such incumbrance. *See* Mortgage 44.

4. Delivery of possession of the property sold is, under the Hindoo law, essential to complete the title of the purchaser against a third person purchasing with possession from the same vendor without notice of the prior transaction. This rule prevails as between competing conveyances, both of which have been registered. Authorities and Hindoo law texts on the subject reviewed. I. L. R. 2 Bom. 299. *See also* I. L. R. 4 Bom. 126.

5. D sold a house to P, and executed a deed of conveyance which was duly registered. The purchase-money, however, was never paid by P, who consequently never obtained possession. Shortly after the conveyance had been registered, P returned it to D with an endorsement thereon to the effect that it was returned because P was unable to pay the purchase-money. The right, title, and interest of P in the house were subsequently attached and sold under a decree obtained against him by the plaintiff, who became the purchaser and sued D for possession: *Held* that the case did not fall under Act IX of 1872 s. 39; that the sale of the house by D to P was not incomplete, as the deed purported to make an immediate transfer of the ownership of the house to P, and P accordingly became the owner of the house; that the endorsement on the conveyance not having been registered, could not affect the property; that the conveyance by D to P having been registered, no oral agreement to rescind it could be proved under Act I of 1872 s. 92 proviso (4); that the plaintiff therefore, as purchaser of the right, title, and interest of P, became legal owner of the house, but subject to all P's liabilities; and as D had a lien upon the house for the amount of the unpaid purchase-money, plaintiff could not obtain possession without paying off this charge. I. L. R. 2 Bom. 547.

6. A vendor of immoveable property who has given possession to the purchaser is not entitled to rescind the contract of sale and recover possession because the purchase-money is not paid. His remedy is to sue for the sum due, and he has a lien on the property for the amount. I. L. R. 3 Bom. 172.

7. On 18th January 1876, plaintiff became purchaser at a Court's sale of the right, title, and interest of G and N in a shop, and, having been obstructed by defendant in obtaining possession of it, sued to recover it from him. The plaint was filed on the 27th January 1877. Defendant answered that he purchased it from G under a deed of sale dated 5th January 1865, and that he had been in possession since that day. The deed of sale was not admitted in evidence for want of registration, but it was found that defendant had been in possession as owner since the 5th January 1865: *Held* that as the defendant admitted that he had derived his title from G (of whose interest in the shop the plaintiff was assignee) the burden of proof lay upon the defendant, and that he had failed to prove his purchase, inasmuch as his unregistered deed of sale could not be received in evidence, and oral evidence was inadmissible in place of the deed: *Held* also that, although the defendant could not prove a title by purchase, it was open to him to establish his title without the aid of the deed of sale; that his possession of the premises for more than 12 years prior to the institution of the suit was adverse both to G and N; and that the claim of the plaintiff, who was assignee of their interest, was consequently barred. I. L. R. 4 Bom. 89.

8. The purchaser of a certain estate paying revenue to Government agreed with the vendors, shortly after the sale, that they should retain a certain portion of such estate free of rent, and that he would pay the revenue payable in respect of such portion. In 1853, in a suit by the vendors against the purchaser to enforce the agreement, the Sudder Court held that the revenue payable in respect of such portion of the estate was payable by the purchaser. In 1875, on a fresh settlement of the estate, the representatives in title of the purchaser applied to the settlement officer to settle such portion of the estate with the representative in title of the vendors. The settlement officer refused this application, but it was subsequently allowed by the superior revenue authorities. The representative in title of the vendors then sued the representatives in title of the purchaser in the Civil Court claiming "that he might, in accordance with the agreement between the vendors and

VENDOR AND PURCHASER (*continued*).

the purchaser, be exempted from paying revenue in respect of such portion, as against the defendants, without any injury to the Government; that the defendants might be ordered to pay as heretofore such revenue; and that the defendants might be ordered never to claim or demand from him any revenue they might be compelled to pay in respect of such portion": *Held*, with reference to Act XIX of 1873, that the Civil Courts could not relieve plaintiff of his liability to pay revenue; and that, in the absence of proof that the agreement by the purchaser was intended to extend beyond the period of the settlement then current and that it was binding upon his representative in title, plaintiff could not obtain the declaration which he sought. I. L. R. 2 All. 415.

9. A contracted to buy from B and Co. 180,000 gunny bags for cash on delivery. Subsequently C agreed with A to advance Rs. 15,000 against 87,500 bags. B and Co. gave delivery orders to A, although the goods remained unpaid for. A then endorsed certain of the delivery orders over to C. On these orders the agents of B and Co., at the request of A, wrote the following words: "The bearer of this will personally take delivery of each lot as required." C took delivery of 50,000 bags, but B and Co. refused to deliver to him the remainder, on the ground that A had not paid them according to the terms of his contract: *Held* that, although there had been no actual appropriation of any goods to A, yet as B and Co., by their agents, had consented to the transfer, and had thereby induced C to advance Rs. 15,000 on the delivery orders being endorsed and made over to him, it was not now open to them to repudiate the transfer, which they had, through their agent, been the means of confirming. (O. J. Ap.) I. L. R. 5 Cal. 669.

10. The proprietor of certain immoveable property conveyed it first to one person and then to another. The first purchaser sued the vendor and the second purchaser for the possession of the property, alleging that he had been put in possession of it but had been ousted by the second purchaser: *Held* that the first sale was not void by reason of the non-payment of the purchase-money, and that, the second sale being invalid as having been made by a person who had no rights and interests remaining in the property, the second purchaser was not a representative of the vendor and entitled to receive the purchase-money found to be still due to him from the first purchaser, and to retain possession of the property until the receipt of that purchase-money. I. L. R. 2 All. 711.

See Attorney and Client 11.
Auction-Purchaser (Execution Sale).
" " (Revenue Sale).
Benamee.
Champerty 6.
Churs 2.
Conditional Sale 1.
Contract 4.
Estoppel 7.
Guarantee 1.
Guardian and Minor 8.
Hindoo Widow 25, 26, 27, 38, 61, 62.
Husband and Wife 1, 2.
Joinder of Parties 4.
Limitation (Act XIV of 1859) 3.
" (Act IX of 1871) 26, 45.
" (Act XV of 1877) 34.
Money Decree 4.
Mortgage 40, 44, 57, 75, 81.
Partition 28.
Possession 14, 15.
Principal and Agent 3.
Privy Council 34.
Registration 6, 22, 34.
Sale (for Arrears of Revenue) 1.
" (in Execution of Decree) 9, 31.
See Sheriff 1, 2.
Trust 1, 10.
Will 39, 57.

Venue.

See Arbitration 8.
Deccan Agriculturists Relief, 2, 9.
Hoondee 5.
Jurisdiction 12, 17, 18, 22, 23, 25, 35, 37.
Mortgage 96.
Partnership 13.

Verification.

See Plaint 11, 12.

Village Watchmen.

See Jurisdiction 53.

Viromitrodataya.

See Hindoo Law 2.
" " (Inheritance and Succession) 43.

Vis Major.

See Embankment 1.
Tank 1.

Voluntary Payment.

1. A deposit of money in Court by a judgment-debtor under protest, in order to prevent an injurious sale, and accompanied by a declaration of intention to bring a regular suit to set aside the summary order rejecting his claim, is not a —. (P. C.) 2 P. C. R. 145 (10 W. R. P. C. 29; 1 B. L. R. P. C. 21; 12 Moo. 65).

So also a payment made by an auction-purchaser to prevent an execution-sale of a mouzah which he had purchased, was held to be not a —, but made under compulsion of law entitling him to a refund of the money so paid by him. (P.C.) *Dooli Chand* v. *Baboo Ram Kishen*, 5th April 1881 (not yet reported).

2. The mortagee of a putnee talook paid certain moneys to prevent the sale of such talook for arrears of zemindaree rent: *Held* that this was not a —, and could not be so considered even in the case where the mortgagee by a covenant in his mortgage-deed had insured himself against loss by such sale. I. L. R. 4 Cal. 539. *See also* 2 P. C. R. 77 (8 W. R. P. C. 17; 11 Moo. 241).

See Landlord and Tenant 7.
Lien 2.
Sale (for Arrears of Revenue) 3.

Waiver.

See Attorney and Client 11.
Bond 2.
Criminal Proceedings 3.
Disclaimer.
Hindoo Law (Adoption) 36.
" " (Coparcenary) 9.
Interest 16.
Limitation (Act XIV of 1859) 21.
" (Act IX of 1871) 66, 101.

Wajib-ul-urz.

See Co-Sharers 11.
Hindoo Law (Inheritance and Succession) 30.
Pre-emption 7, 14, 17.
Puttee 6.
Record-of-Rights.
Relief 2.
Trust 11, 12.
Will 13.

Wall.

See Cesses 1.
Construction 24.
Res Judicata 39.
Right to Light and Air 7.
" " Water 1.

Warrant.

See Attachment 14.
Extradition 1.
Maintenance 11.
Pension 4.
Small Cause Court 16.

Warranty.

1. Of title. *See* Sale (in Execution of Decree) 32, 53, 54; Sheriff 1, 5.
2. Implied —. *See* Master and Servant 1.
3. Free of particular average. *See* Insurance 7.

See Sale 6.

Washerman.

See Artizan 1.

Waste.

See Mischief 1.
Res Judicata 4.
Reversioner 1, 3.
Waste Land.
Watercourse 2.

Waste Land.

See Meerasee 6.
Right to Water 3.

Watan.

See Cazee 2.
Limitation (Act XIV of 1859) 22
Timber 3.

Water.

See Bheel.
Embankment 1.
Irrigation.
Julkur.
Khal.
Mischief 1.
Public Spring or Reservoir.
Pyne.
Reclaimed Land 1.
Right to Water.
Tal.
Tank.
Watercourse.
Well.

Watercourse.

1. The right to water flowing to a man's land through an artificial — constructed on a neighbour's land, must rest on some grant or arrangement, proved or presumed, from or with the owner of the land from which the water is artificially brought, or on some other legal origin. Such a right may be presumed from the time, manner, and circumstances under which the easement has been enjoyed. (P. C.) L. R. 6 I. A. 33 (I. L. R. 4 Cal. 633).

2. This case having been heard on special appeal, the Privy Council refused to modify the language of the first Court's decree with regard to the enjoyment by the defendant of the water in a certain *tal*, leaving the defendant's exercise of such right, if wasteful or improper, to be the subject of a future enquiry. (P. C.) 3 P. C. R. 816 (L. R. 7 I. A. 240).

3. In a suit brought by the zemindar to obtain an order upon the Government to re-excavate and clear the water passage of a particular *khal* situate within the pergunnah, the subject of a kubooleut equally binding on the Government and the zemindar: *Held* that the case was not one in which the Court would decree specific performance. I. L. R. 3 Cal. 464.

See Limitation (Act IX of 1871) 5, 6.
Right to Water 3.

Well.

See Lease 9.

West-India Estate.

See Lien 1.

Wharfinger.

See Bill of Lading 1, 2.

Whipping.

1. A sentence of — passed on a person who is already under sentence of death or transportation or penal servitude or imprisonment for more than 5 years is illegal. If the sentence of — precede, instead of follow, the other sentence, the passing of the latter sentence renders the infliction of — illegal. (Cr.) I. L. R. 1 Mad. 56.

2. Theft is not the same offence as dishonestly receiving stolen property; and therefore — cannot be added as a punishment for the latter offence in the case of a person previously twice punished for the former offence. (Cr.) I. L. R. 1 All. 666.

Widow.

1. Parsee Widow. *See* Succession 3, 6, 7; Will 64, 65.

See Hindoo Widow.
Mahomedan Widow.

Widower.

1. Parsee Widower. *See* Succession 7.

Wife.

See Hindoo Law (Inheritance and Succession) 11.
Husband and Wife.

Will.

1. The extent of a Hindoo's testamentary power of disposition must be regulated by the Hindoo law, and cannot interfere with a widow's right to maintenance. (P. C.) 2 P. C. R. 37 (8 Moo. 66).

2. According to the true construction of the — in this case, it was held that, although the — purported to begin with an absolute gift in favor of an idol, the property granted to the idol was effectually granted for the benefit of the testator's four sons and their offspring in the male line as a joint family, subject to the performance of acts, business, ceremonies, and festivals, and to the provisions

WILL (*continued*).

for maintenance contained in the —; and that the surplus income was in like manner given for the benefit of the four sons and their offspring in the male line as a joint family. *Ib.* *See* (P. C.) 2 P. C. R. 661 (18 W. R. 226; 11 B. L. R. 86); 3 P. C. R. 694 (L. R. 6 I. A. 182; I. L. R. 5 Cal. 438).

3. In a former suit an alleged testamentary paper was produced by plaintiff to show that the property in dispute was conveyed by it to his father, but on the trial of the appeal, when the Privy Council was about to enter upon the question as to the validity of the testamentary paper, plaintiff gave up the point that the paper was testamentary, and disclaimed having any title under it as a testamentary devise: *Held*, in a subsequent suit by plaintiff to recover the same property, that he could not set up the same paper as a valid — and testament. (P. C.) 2 P. C. R. 46 (10 W. R. P. C. 1; 11 Moo. 50). *See* 15 W. R. 251.

4. Mode of construing the — of a Hindoo, directing his sons "living jointly in respect of food" to take care of and look after his property, and carry on his trading business, and giving no directions as to the accumulations of the profits of a deceased son's share. (P. C.) 2 P. C. R. 90 (9 W. R. P. C. 1; 12 Moo. 41).

5. He who rests his title on a nuncupative —, or the spoken words of a man since deceased, is bound to allege and prove the words relied on. (P. C.) 2 P. C. R. 114 (9 W. R. P. C. 15; 12 Moo. 1).

6. The construction and effect of a — must depend on the law of the domicile, if that can be ascertained. (P. C.) 2 P. C. R. 324 (13 W. R. P. C. 41; 5 B. L. R. 1; 13 Moo. 277).

7. In this case property purchased out of accumulations of surplus rents of devised estates was held, not as an accretion to the devised estates, and as passing with them under the gifts made by the —, but as following the ownership of the purchase-money. (P. C.) *Ib.*

8. In this case the word "children" was held to include illegitimate children. (P. C.) *Ib.*

9. A person capable of taking under a — must be such a person as can take a gift *inter vivos*, and therefore must either in fact or in contemplation of law be in existence at the death of the testator. (P. C.) 2 P. C. R. 692 (18 W. R. 359; 9 B. L. R. 377; L. R. I. A. Sup. 47). *See also* 20 W. R. 472.

10. Defendant was held beneficially entitled to a life interest under Prosonno Coomar Tagore's — with reversion to his heir-at-law. (P. C.) *Ib.* *See* 3 P. C. R. 46 (22 W. R. 377; 14 B. L. R. 60; L. R. 1 I. A. 387).

10*a*. In the above case, the testator, who was offended by his son's conversion to Christianity, by his — declared that he had already made such provision for the son as was sufficient, and that the son should "take nothing whatever under the —," yet the testator, having by that — attempted to create certain trusts of his property which were deemed to be *ultra vires* and void, was declared to that extent to have died intestate, and his son was held, as his heir-at-law, to be entitled, subject to the trusts of the — not declared void, to the real and personal property of the testator. (P. C.) *Ib.*

11. Where an heir-at-law sued to recover immoveable property devised by his father to another person and to set aside the — on the ground that the testator could not devise ancestral property: *Held* that the Court had the power, with the consent of the parties, to substitute for the relief specially sought (*viz.* the cancellation of the —) the simple declaration that certain deeds of sale and gift sought to be set aside could not affect the ancestral property. (P. C.) 2 P. C. R. 899 (20 W. R. 377; 12 B. L. R. 304; L. R. I. A. Sup. 212).

12. By the Mahomedan law no writing is required to make a — valid, and no particular form even of verbal declaration is necessary as long as the intention of the testator is sufficiently ascertained. (P. C.) 3 P. C. R. 235 (25 W. R. 121).

13. Where a Mahomedan testatrix devised a certain disposition of her whole property in the course of a *wajib-ul-urz* relating to only a portion of it, and independent testimony of her intention to make this disposition was produced: *Held* that the disposition was valid against a claim of possession set up by a rival claimant. (P. C.) *Ib.*

14. Construction of Major-General Claude Martin's —, and *cy-près* application of the fund for the relief of poor debtors detained in prison in Calcutta consequent on the abolition of imprisonment for debt. (P. C.) 3 P. C. R. 244 (26 W. R. 1; L. R. 3 I. A. 32; I. L. R. 1 Cal. 303).

15. The policy of the Mahomedan law appears to be to prevent a testator from interfering by — with the course of the devolution of property according to law among his heirs, although he may give a specified portion, such as a third, to a stranger. But a holder of property may, to a certain extent, defeat the policy of the law by giving in his lifetime the whole or any part of his property to one of his sons, provided he complies with certain forms, the *onus* of proving which clearly is upon those who seek to set up a proceeding of this sort. (P. C.) 3 P. C. R. 287 (26 W. R. 36; I. L. R. 2 Cal. 184; L. R. 3 I. A. 291).

16. A devise to pious uses which was in such vague terms as to confer the beneficial interest on the executor, was held to be in contravention of the Mahomedan law and invalid without the consent of the heirs. (P. C.) *Ib.*

17. Where a — was to the effect "I declare that I give my property to K whom I have adopted," followed by the direction "my wives shall perform the ceremonies according to the Shastras, and bring him up": *Held* that the gift of his property by the testator to a designated person was absolute, and that the provision "should this adopted son die, and my younger brother have more than one son, then my wives shall adopt a son of his" further indicated that the testator did not contemplate his widows having the power of cancelling the adoption of K and ousting him from the benefit he was to take under the — by declining to perform the ceremonies, but that whether they performed the ceremonies or not, so long as K lived, no other adoption could take place. (P. C.) 3 P. C. R. 338 (26 W. R. 91; L. R. 3 I. A. 253).

18. Revocation of a Hindoo's — by parol. *See* Oudh Estates 10.

19. Act XIII of 1875 does not empower the High Court to grant probate limited to property in any Province or Presidency, in cases where an unlimited grant had been made extending only to property in another Province or Presidency before the passing of the Act. (O. J. Ap.) I. L. R. 1 Cal. 52.

20. Rule 4 of the High Court Rules of 22nd June 1875, as to grants of probate, only applies to grants of the class mentioned in Rule 1, *i.e.*, only to cases in which the application for probate is made after 1st April 1875 and not to cases in which the application was made before that date. *Ib.*

21. The — of a Jew, made subsequently to his first marriage, but previously to a second marriage in the lifetime of his first wife, was held to be revoked by such second marriage under Act X of 1865 s. 56. (O. J.) I. L. R. 1 Cal. 148.

22. Letters of administration with — annexed may, under Act X of 1865 s. 258, be granted after the expiration of seven clear days from the death of the testator. (O. J.) I. L. R. 1 Cal. 149.

23. By Act X of 1865 s. 50 no particular form of attestation is necessary. Therefore, where to a Bengalee document, purporting to be her last — and testament, the name of the testatrix was written by A, and the testatrix then, in his presence, affixed her mark, and A in her presence wrote beneath it "By the pen of A," and the testatrix was identified to the Registrar who was present and had seen her affix her mark to the document, and who in her presence put his signature as having identified her: *Held* a sufficient attestation, and probate was granted. (O. J.) I. L. R. 1 Cal. 150. *See also* I. L. R. 6 Cal. 17.

24. A partner in a Calcutta firm died in England leaving a — and entitled to a share in an Indigo concern and in certain immoveable property in Calcutta, and probate duty had been paid thereon by one of his executors in obtaining probate of the — in England: *Held* that the executor in Calcutta was not entitled, in obtaining probate, to exemption from the probate duty payable under the Court Fees Act VII of 1870 sch. I art. 12 in respect of the properties. (O. J.) I. L. R. 1 Cal. 168.

25. If a testator appoints persons to be his executors and trustees and directs them to do certain acts which can only be done by the owners of his residuary estate, the trustees will take that estate, though there be no express devise to them. (O. J.) I. L. R. 2 Cal. 45.

26. A creditor, not of the deceased, but of his next of kin, is not a person "having an interest in the estate of the

WILL (*continued*).

deceased" within the meaning of Act X of 1865 s. 250 and is not entitled to come in and controvert, and oppose the grant of probate of, a — said to have been executed by the deceased. 25 W. R. 489 (I. L. R. 2 Cal. 208).

Semble. A person interested by assignment in the estate of the deceased may, where a — has been set up and proved at variance to his interests, apply for the revocation of probate of the — so set up. I. L. R. 4 Cal. 360).

27. U, one of the sons of a Hindoo testator, died leaving an only son S born in the lifetime of the testator. S died shortly after his father intestate and without male issue. In a suit by the widow of S claiming as his heir and representative to recover the share of U as having descended to S absolutely, and to obtain partition: *Held* that, inasmuch as U survived the testator, the gift to the male issue of the testator's sons was void for remoteness as including objects which might have come into existence after the testator's death and therefore be incapable of taking. The rule that where there is a gift to a class, and some persons constituting that class cannot take in consequence of remoteness, the whole bequest must fail, as well as the principle of the English Courts in deciding questions of remoteness, that regard is to be had to possible and not to actual events, is applicable to the interpretation of the wills of Hindoos. (O. J.) I. L. R. 2 Cal. 262. *See also* (O. J. Ap.) I. L. R. 4 Cal. 455.

28. The gift to the male issue being void, the subsequent limitations were also void. S therefore, and through him the plaintiff, was entitled to a share in such part of the testator's estate as by reason of the invalidity of the gifts in his — was undisposed of. (O. J.) *Ib.*

29. For the purpose of determining the probate fee to be paid in respect of an annuity, the word "value" in Act VII of 1870 sch. 1 art. 11 must be taken to mean the market value of the annuity, and not ten times the amount of the yearly payment. (O. J.) I. L. R. 1 Bom. 118. *See* 41 *post.*

30. Where the property in respect of which probate is sought, is mortgaged, the amount of the mortgage encumbrance must be deducted from the market value of the property, and the probate fee charged on the balance. (O. J.) *Ib.*

31. Held that plaintiff, who had obtained letters of administration *cum testamento annexo* and *de bonis non* of B K, had no ground of action as administrator of a Hindoo testator; that independently of the Succession Act X of 1865 and the Hindoo Wills Act XXI of 1870 (which were not applicable to the case), the executors of a Hindoo do not, in the character merely of executors, take any estate, properly so called, in the property of the deceased; that accordingly, on the death of the widow (the devisee for life in trust), there being no gift of the premises to the executors named in the —, the ownership in the premises would devolve upon the surviving heirs of the testator subject to the trust, and such heirs would accordingly be trustees under or by reason of the — of their ancestor, though succeeding to the property in their character of heirs; that the trusteeship thus vesting in all the surviving heirs, the release, though operative to pass the legal estate so as to vest in the plaintiff alone, could not vest the trusteeship in him alone, and accordingly the plaintiff could not maintain this suit for the recovery of the trust premises sold to the defendant by the widow. unless joined by the other heirs of the testator; and that even if the other heirs had joined as plaintiffs, still the suit, being one by trustees to disaffirm the completed act of a purchaser against the person claiming by virtue of such act, would not lie. (O. J.) I. L. R. 1 Bom. 269.

32. It is sufficient acknowledgment by a testator of his signature to his — if he makes the attesting witnesses understand that the paper which they attest is his —, though they do not see him sign it, or observe any signature to the paper which they attest, provided that the Court is satisfied that the testator's signature was on the — when the attesting witnesses attested it. (O. J.) I. L. R. 1 Bom. 547.

33. The statement in a — as to the value of the testator's property is no evidence thereof. I. L. R. 1 Bom. 561.

34. A nuncupative —, or a verbal bequest, of his separate property made by a separated Hindoo beyond the limits of the ordinary original jurisdiction of the High Court, and not relating to any immoveable property to which the Hindoo Wills Act (XXI of 1870) applies, is valid. I. L. R. 1 Bom. 641.

35. The rule of English Common law, that the undisposed of residue of personal estate vests in the executor beneficially, does not apply to the — of a Hindoo testator in India. (F. B.) I. L. R. 2 Bom. 388.

36. In the exercise of the testamentary power amongst Hindoos, the intention to disinherit must be clear and unambiguous. Mere bequests of special portions of the testator's estate to the heir, without language of disinherison, do not exclude him from the undisposed of residue. (F. B.) *Ib.*

37. An executor, who by the — is made an express trustee for certain purposes, is, as to the undisposed of residue, a trustee within the scope of Act XIV of 1859 s. 2 for the heir or heirs of the testator. (F. B.) *Ib.* *See* (O. J. Ap.) I. L. R. 4 Cal. 897.

38. Where a testator leaves a legacy absolutely as regards his estate, but restricts the mode of the legatee's enjoyment to secure certain objects for the benefit of the legatee, and when such objects fail, the absolute gift prevails and does not fall into the residue of the testator's estate. Therefore, where a testator gave legacies to certain of his grandsons upon the usual trusts as to investment and application of income: *Held* that the gifts to the grandsons were absolute, and that the subsequent provisions were simply a qualification of the gifts for the benefit of the legatees; and that, therefore, upon the death of one of the grandsons unmarried, his legal representative was entitled to the legacy left to him. (O. J.) I. L. R. 3 Cal. 553.

39. The question referred to the Full Bench was whether a deed of sale, being a deed of sale not under the hands of the executors of a — themselves, but by and in the name of the person to whom they delegated their authority under a power of attorney, was valid, and was a good and binding conveyance of the property it purported to sell: *Held* that the executors had the authority, under Act X of 1865 s. 269, to confer a power of sale, and that the conveyance was accordingly valid and operated to transfer the property to the purchaser. (F. B.) I. L. R. 1 All. 710.

40. Executors obtaining a second grant of probate subsequent to the enactment of Act VII of 1870 (the first grant having been taken out previously to that enactment) are not exempted from the payment of the *ad valorem* duty chargeable under that Act, although the full fee then chargeable by law had already been paid at the time when the first probate was taken out. (O. J.) I. L. R. 3 Cal. 733.

41. Where it appeared that property disposed of by a — was bequeathed to the testatrix subject to the payment thereout of an annuity for life to a person who survived her: *Held* that the *ad valorem* fee prescribed by Act VII of 1870 sch. 1 art. 11 ought to be levied upon the value of the property, less the capitalized value of the annuity. (O. J.) I. L. R. 3 Cal. 736. *See* 29 *ante.*

42. Upon a *boná fide* application for probate of a —, it is not the province of the Court to which the application is made to go into questions of title with reference to the property of which the — purports to dispose. The grant of probate does not prejudice the rights of any person who claims any such property. I. L. R. 4 Cal. 1.

43. Certain immoveable property was devised by — upon condition that the devisee, who was also an executor of such —, should execute a mortgage of such property to the Official Trustee of Bengal for the time being to secure the payment of a certain legacy. The devisee, with the intention of giving effect to such condition, mortgaged such property to his co-executors: *Held*, in a suit by one of such co-executors to enforce the mortgage, that the mortgage, not being executed in accordance with the terms of the — was invalid, and the suit was not maintainable. I. L. R. 1 All. 753.

44. *Semble* that an assignment by a legatee to an executor of a legacy is void. *Ib.*

45. A Scotchman who entered into the service of the E. I. Co. and continued in that service after the passing of 21 and 22 Vic. c. 106 transferring the Government of India from the E. I. Co. to the Crown, died in the year 1878 leaving a holograph — which was not attested according to Act X of 1865, but which was admittedly good according to Scotch law: *Held*, upon an application for a declaration that the document was a good —, and for a grant of

WILL (*continued*).

probate, that the deceased had acquired an Anglo-Indian domicile, which he had not lost at the time of his death, notwithstanding the above Statute and Act X of 1865, and therefore, the — not having been properly executed, probate was refused. I. L. R. 4 Cal. 106.

46. A testator gave his residuary estate to trustees upon trust to invest and "to pay, transfer, or divide the same unto, between, or among the children of my brothers A and B respectively, to be paid, transferred to, and divided among them in the proportions and at the times hereinafter mentioned; that is to say, the share of each and every son of my said two brothers shall be double that of each and every daughter, and the shares of each son shall be paid to him or them respectively upon his or their attaining the age of twenty-one years, and the share of each daughter to be paid to her or them on her or their respectively attaining that age or previously marrying, with benefit of survivorship between and among all the said sons and daughters." The testator left him surviving his two brothers and a sister C. A and B both died before the eldest of the testator's nephews or nieces attained twenty-one or married. In a suit instituted by the widow and executrix of A to have it declared that the above bequests were void under Act X of 1865 ss. 101 and 102, that the testator died intestate as to the residue of his estate, and that she as executrix of A was entitled to receive a one-third share of the said estate and the accumulations thereof: *Held* that the legatees took vested interests subject to be divested on death before the contingencies mentioned in the — happened; that the period of distribution alone was postponed; and that the bequests were valid. *Semble*. Act X of 1865 s. 98 applies only to vested interests. (O. J.) I. L. R. Cal. 304.

After the death of the testator in the above case, and before the period of distribution arrived, a son was born to B, and one of the sons of A died intestate and unmarried: *Held* that the after-born son of B was entitled to a double portion as one of the male children of the testator's brother, and that the share of the son of A was divisible among the surviving male and female children in equal shares. (O. J.) I. L. R. 4 Cal. 670.

47. A — by a Hindoo is not invalid because the text of it was not written by the testator himself, and because his signature is not attested. The rules of Hindoo law relating to documentary evidence are not to be applied strictly in the case of wills. I. L. R. 3 Bom. 7.

48. The grant of probate is the decree of a Court which no other Court can set aside, except for fraud or want of jurisdiction. Where it is alleged that probate has been wrongly granted, the proper course to be pursued is, to apply to the Court which granted the probate to revoke the same. Procedure upon such application discussed. I. L. R. 4 Cal. 360.

49. W R by his —, left to his wife, M A R, the whole of his property in the confidence that she would act justly to their children in dividing the same when no longer required by her. M A R, by her —, left to their children certain portions of such property, leaving to their child A C R, amongst other things, certain banking shares. These shares were attached in the execution of a decree against the executors to her estate as belonging to such estate: *Held* that she took under her husband's — a life-interest only in his property, with a power of appointment in favor of the children, and that the shares belonged to A C R, and could not be sold in execution of the decree as part of the estate of M A R. I. L. R. 2 All. 55.

50. H, by his —, bequeathed to his daughter A M H "on her attaining her eighteenth year, the sum of Co.'s Rs. 10,000, with any interest that may have accrued thereon, if she marries, to be settled upon herself and children solely; should she die unmarried, her money to be equally divided between her brothers; and if either of them die, the whole of deceased's money to go to the survivor": *Held* that A M H (who had attained her eighteenth year) had a vested interest in the legacy subject to be divested upon her dying at any time unmarried, and further subject to an executory trust in favor of her children in the event of her marrying at any time, and therefore that she was not entitled to have the capital of the legacy paid to her. (O. J.) I. L. R. 4 Cal. 420.

51. A testator by his — directed as follows: 'I do hereby direct my trustee to feed the really needy and poor at G out of a separate expense out of my estate, to be contributed to the worship of L my ancestral goddess. I do direct my trustee to spend suitable sums for the annual *shradhs* or anniversaries of my father, mother, and grandfather, as well as of myself after my demise, for the performance of the ceremonies and the feeding of the Brahmins and the poor; to spend suitable sums for the annual contribution and gifts to the Brahmins, Pundits holding *tolls* for learning in the country at the time of the Doorga Poojah; to spend suitable sums for the perusal of Mohabharat and Pooran and for the prayer of God during the month of Kartick. Should there be any surplus after the above expenditure, then I do hereby direct my trustee to spend the said surplus in the contribution towards the marriage of the daughters of the poor in my class and of the poor Brahmins, and towards the education of the sons of the poor amongst my class, and of the poor Brahmins, and other respectable castes, as my trustees will think fit to comply": *Held* that the gifts were valid testamentary bequests, and that the words "should there be any surplus after the above expenditure" created a general residuary bequest, which would absorb any of the preceding bequests if they should happen to be invalid. *Quære* whether the bequests to pundits holding *tolls*, and for the reading of the Mohabharat and Pooran and for prayer to God were valid. (O. J. Ap.) I. L. R. 4 Cal. 443.

52. A Hindoo testator empowered his executor to lay out such portion of his estate as the executor might think fit toward charitable purposes, and did not dispose of the residue of his estate. The executor renounced, and no probate of the — or letters of administration with the — annexed was granted. In a suit by the testator's sole heiress for construction of the — and for administration, the Court allowed the execution of the — to be proved in Court, declared that it was void for uncertainty, and directed the usual administration accounts to be taken. (O. J.) I. L. R. 4 Cal. 508.

53. A testator, after giving certain specific bequests, disposed of his property as follows: "I request that the interest of my property, invested in Government securities, be disposed of from time to time as follows: *First* to my dear son A two shares; to my two dear daughters B and C, each one share; the interest to be paid to them quarterly or half-yearly as may be most convenient. *Second* I request that these shares shall not be transferable during their life-time. *Third* at the demise of any of my children without issue, any such share to be divided in the above proportion to the survivors. *Fourth* in the event of issue, they may bequeath their share to any one of their children they may select, subject to the above conditions." C married in 1874, and, by a settlement made in consideration of the marriage, her share was assumed to be assigned to trustees upon certain trusts. In 1875, C and her husband made the following joint —: "We do hereby constitute the survivor of us to be executor or executrix in our estate and sole heir of the same, together with the child or children begotten in our marriage." C died shortly after the execution of the above—leaving one child. In a suit by C's husband and the trustees of the settlement of 1874 for the administration of the testator's estate and for the construction of his —: *Held* that the settlement of 1874 could not operate upon C's share in consequence of the direction of the testator, that it should not be transferred in the lifetime of C, that the plaintiffs took nothing under the settlement, and also, that the power of appointment given by the — of the testator had not been properly exercised by the joint —, and that the child of C took the whole of her mother's share. (O. J.) I. L. R. 4 Cal. 514.

54. Amendment of error in probate allowed, with reference to Act X of 1865 s. 232. (O. J.) I. L. R. 4 Cal. 582.

55. The representative of an assignee by devise of a debt, cannot sue to recover the debt without having either taken out probate of the — of the testator, or having obtained a certificate under Act XXVII of 1860 to realize the debts belonging to his estate. I. L. R. 4 Cal. 645.

56. After letters of administration with the — annexed had been granted, the Administrator-General found a book containing memoranda in the testator's handwriting, made after the date of the —, and directing certain dispositions of his property. One entry referred in express terms to the —. The testator was a domiciled Scotchman; *Held* on

WILL (*continued*).

a petition by the Administrator-General, asking that the memoranda might be admitted to probate, that the memoranda were not testamentary documents, and the petition was, therefore, dismissed. (O. J.) I. L. R. 4 Cal. 721.

57. The question, how far lands purchased from a Hindoo devisee are liable in the hands of the purchaser for the testator's debts, stands on the same footing as a similar question would under the present English law. The creditors of the ancestor or testator may follow his lands into the possession of a purchaser from the heir or devisee, if it can be proved that such purchaser knew (1) that there were debts of the ancestor or testator left unsatisfied; and (2) also that the heir or devisee to whom he paid his purchase-money intended to apply it otherwise than in payment of such debts. But a purchaser ignorant on either of these points has a safe title, for no duty is cast upon the purchaser from the heir or devisee, to enquire whether there are any debts of the ancestor or testator, or to see to the application of his purchase-money, even when there is an express charge of debts by the testator on the devised estate, at least when the devisee is also executor; and in such a case, the burden of proof is entirely on the creditor to show that the purchaser from the devisee had notice that the latter intended to misapply the purchase-money. For a purchaser to be affected with constructive notice through his solicitor, the latter himself must have actual notice. (O. J.) I. L. R. 4 Cal. 897.

58. The direction contained in Act X of 1865 s. 50 cl. 3, as to the signature of witnesses attesting an unprivileged —, is not satisfied by the witnesses affixing their marks. It is necessary for the validity of a — that the actual signature, as distinguished from a mere mark, of at least two witnesses should appear on the face of the —. I. L. R. 3 Bom. 382.

The signatures of the two or more attesting witnesses to a — required by s. 50 must be attached to the — after, and not before, the testator's signing or affixing his mark to it. I. L. R. 5 Cal. 738; *Ib.* 6 Cal. 17.

Quære whether a — can be properly attested by a marksman. I. L. R. 5 Cal. 738.

59. H K died on 5th July 1871, leaving two widows (J and A) and one son (the defendant) him surviving. By his — he appointed D his executor and named the defendant his residuary legatee. At the time of his death, H K was indebted to M in a large amount, for which M held mortgages on his property. On 5th March 1873, M's debt amounted to Rs. 133,631, and it was agreed between M and D *as executor* that the mortgaged property (estimated at one lakh in value) should be made over to M absolutely in part payment, and that D should become *personally* liable to her for the balance of Rs. 33,631 with interest at 9 per cent. payable within 12 months, in consideration whereof M was to release D *as executor* and the defendant from liability for the sum of Rs. 133,631. Shortly afterwards a new arrangement was made. M agreed to abandon Rs. 10,631 of the Rs. 33,631 due under D's bond and to accept Rs. 23,000 payable in yearly instalments of Rs. 3,000 in satisfaction of her whole claim. In pursuance of this agreement, D *as executor* paid the first instalment. J paid the second instalment, D having made over the estate of H K to the Administrator-General under the provisions of Act II of 1874. M died in October 1874, and the plaintiff, as her executrix, sued the defendant for the instalments due in 1876, 1877, and 1878: *Held* that the estate of H K having been released by the deed executed on 5th March 1873, it was not competent for D, as executor, by a new contract to charge it with any liability in respect of the amount due to M. (O. J.) I. L. R. 4 Bom. 5.

60. A, a Hindoo, made the following provisions by his —: "I have two sons living, B and C; they, and an infant son of my eldest son, the late D, and my wife E (four persons), shall succeed to the whole of my estate: these four persons will receive equal shares. If any of these four persons happen to die, which God avert, the survivor of them will receive this estate in equal shares; but if there be a son or a grandson surviving as the heir and representative of the party dying, such survivor shall succeed to his share: if there be a daughter or granddaughter in the female line surviving, such survivor shall receive a share of the property; the expense of the marriage of such female child only shall be defrayed out of the estate;" and also provided that "so long as my infant grandson shall not have attained his majority, the whole of my estate shall remain undivided." All the persons named survived the testator: *Held* that they took absolute interests in the shares named; and that the estate became divisible on the infant son of D attaining majority. (O. J.) I. L. R. 5 Cal. 59.

61. A, a Hindoo widow, died intestate, leaving her surviving sons of her husband's elder brothers, a sister, and the husband and children of a deceased sister. At the time of her death A was possessed of certain articles of jewellery, given to her on her marriage, and of certain other articles of jewellery, and of Government paper standing in her name, which she had purchased herself. She was also possessed of a share of a house and some Government paper, which had been left to her by the — of her mother. The provision of the — in question being obscure, the parties interested under it had referred their difficulties to arbitration, and by the award the arbitrators allotted to A the share of the house of which she had died possessed "to be held by her in severalty as a Hindoo daughter in the manner prescribed by the Hindoo law as prevalent in Bengal;" and allotted the Government paper to her, "to be taken and enjoyed by her absolutely." In a suit by the sons of A's husband's elder brothers claiming the whole of her property as her *streedhun*: *Held* that, as far as the source was concerned, all the gifts under the — might well be A's *streedhun*, and that as the award gave her an absolute interest in the Government notes, they were her *streedhun* and passed to the plaintiffs together with all the jewellery and the Government notes purchased by her; but that, as the award gave her only the interest of a Hindoo daughter in the house, and that as what a daughter inherits from her mother does not become her *streedhun*, the plaintiffs had no claim to the share of the house. (O. J.) I. L. R. 5 Cal. 222.

62. B L M, a Hindoo, died in 1874, leaving a widow K K D, a daughter's daughter H D D, and a brother R L M with whom he was on bad terms. By his — which he made on 9th August 1870, and at a time when there was no reason to abandon all expectation of his leaving male issue of his own, B L M directed that, in the event of his dying without leaving a son, grandson, or son's grandson, his widow K K D should take the whole of his estate *according to the shastras* and enjoy the profits thereof for her life, and that on her death, in the event of a daughter or daughters having been born to him, then she or they, and on the death of her or them, then her or their son or sons (the testator's daughter's sons) should in like measure take and become the owner or owners of the estate *according to the shastras*; and that in the event of there being no daughter or daughter's son of the testator living at the time of the death of his widow, then his granddaughter H D D should take the whole estate absolutely from generation to generation (*pootro pootradi*); and that in the event of no son or daughter being born to the testator after the execution of his will and of his granddaughter H D D dying childless or being a barren or childless widow or otherwise disqualified, then the whole of his property should go to the Government to be employed by it for charitable and philanthropic purposes. The main object of the testator, in making this disposition of his property, was admittedly to exclude R L M from the inheritance: *Held* that H D D, if she survived K K D and was not then a barren or childless widow or otherwise disqualified, would take not a life interest, but an absolute estate to the exclusion of R L M; that the words *pootro pootradi* had generally the effect of defining the estate of inheritance, and did not by themselves necessarily denote that the estate given was to be one descendible to heirs male only; and that in case of H D D not surviving K K D, or of her being at the time of K K D's death for any reason disqualified from taking the estate, then upon the death of K K D the gift of the Government of the reversion to the exclusion of R L M would take effect, and was a good and valid gift. I. L. R. 5 Cal. 228.

(Generally affirmed, although decree slightly amended, by P. C. on appeal). L. R. 8 I. A. 46.

63. Where a testator had made a bequest for charitable purposes and had made no express provision for the manage-

WILL (*continued*).

ment of the charitable trust so created, except by directing that in the event of his heirs failing to carry out his wishes in respect of the trust fund, the Civil Court should take the fund and the management of the trust summarily into its own hands: *Held* that, in the absence of misconduct, the widow and not the Collector was the proper person to be appointed trustee. *Ib.*

64. A, a Parsee, by his —, expressly directed that neither his daughter nor his widow should take any share of his property, the whole of which he bequeathed to his brother, who, however, pre-deceased him: *Held* that A had died intestate, not having made any bequest or devise of his property which could take effect, inasmuch as his sole devisee had pre-deceased him, and that the estate must, therefore, go in accordance with the law of succession. I. L. R. 4 Bom. 537.

65. The use of mere negative words, unaccompanied by any effective disposition of his property, could not exclude the daughter and widow from succeeding to their shares of the estate. *Ib.*

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1. Effect of a defendant not coming forward as a — to exculpate himself. (P. C.) 2 P. C. R. 263 (12 W. R. P. C. 38; 2 B. L. R. P. C. 44).

Effect of his not attending when summoned as a —. I. L. R. 2 Cal. 222.

2. The *ex-parte* deposition of a —, who might have been called and cross-examined at the trial, ought not to have any weight given to it. (P. C.) 2 P. C. R. 448 (16 W. R. P. C. 11; 9 B. L. R. 364; 14 Moo. 86).

3. It may be objected to a man's credit that he is a professional —; but not to state broadly and generally that a — is unworthy of credit because he has given evidence in other cases. (P. C.) 2 P. C. R. 714 (18 W. R. 285).

4. Where a — who does not come to give an opinion upon an isolated fact in the cause, but to prove the whole of plaintiff's case, is shown to have come to prove a case false in its material features, much reliance cannot be placed on his evidence as to any particular questions in the cause. (P. C.) 2 P. C. R. 732 (18 W. R. 523).

5. The accused were charged with rioting, and being called upon for their defence, named several witnesses, and summonses on the following morning were issued for their appearance, but they were not found. The accused then applied for further time for the appearance of the witnesses. This the Magistrate refused to grant, and he convicted the accused: *Held* that this being a warrant case, it was the duty of the Magistrate to summon the witnesses that might be offered by the accused, and that he might at his discretion have adjourned the case. (Cr.) I. L. R. 3 Cal. 573.

6. Act X of 1872 s. 359 empowers a Magistrate to exercise his judgment and enquire as to the materiality of a — who he considers is named by the accused as a — for the purpose of vexation and delay; but not to enquire into what the defence of the accused is to be, and then to abstain from summoning the whole of the witnesses cited by the accused. (Cr.) *Ib.*

7. Witnesses summoned on behalf of the prosecution, and not called, ought to be placed in the box for cross-examination, in order that the defence may have the opportunity of exercising this right; and *à fortiori*, if such a — is called and examined by the Court under Act I of 1872 s. 165, the prisoner should be allowed to cross-examine. (Cr.) I. L. R. 5 Cal. 614.

8. It is only in extreme cases of delay or expense that the personal attendance of a — before the Court of Session should be dispensed with, and the evidence given by him before the committing Magistrate referred to. (Cr.) I. L. R. 2 All. 646.

9. A — is entitled to be paid his expenses by the party at whose instance he has been summoned, although he has not applied for them before giving his evidence. (O. J.) I. L. R. 4 Bom. 619.

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Written Statement.

1. Act VIII of 1859 s. 123 contemplates that a defendant shall, in his —, set forth the case he intends to make at the trial. (O. J.) I. L. R. 1 Bom. 209.

2. A supplemental — cannot be filed after the parties have entered upon their case at the hearing. (O. J.) I. L. R. 4 Bom. 576.

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1. Jurisdiction of the British Consul at — to hear and determine suits of a civil nature between British subjects. I. L. R. 3 Bom. 58.

2. Slave trade at —. *Ib.*

3. The High Court at Bombay has jurisdiction to try a prisoner accused of having committed murder at —, and sent by the British Consul at — to Bombay for trial. (O. J. Cr.) I. L. R. 3 Bom. 334.

4. Power of British Consul at — to take the depositions, and their admissibility in evidence at the trial under Act I of 1872 s. 33. (O. J. Cr.) *Ib.*

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Zemindaree.

Zemindaree.

1. Although a — had been held entire for a long period, yet it was held that family usage could not exempt it from the operation of Reg. XI of 1793, which provided that if, after a certain date, any zemindar died without a will etc., and left two or more heirs entitled (either according to Hindoo or Mahomedan law) to succeed to a portion, such heirs should succeed. (P. C.) 2 P. C. R. 993 (2 Moo. 441).

2. Reg. X of 1800 does not apply to an undivided — in which a custom may prevail that the inheritance should be indivisible. (P. C.) *Ib.* *See* (P. C.) 2 P. C. R. 744 (19 W. R. 8; I. L. R. 1 Cal. 186).

3. Where an ancient —, which under the Mahomedan Government was a family raj descendible to a single heir according to the rule of primogeniture, was under the British Government divided into two distinct zemindarees, one of which (the larger) was granted to the eldest son, and the other to the second son, the Privy Council, without expressing any opinion as to whether the former (with which it had nothing to do in this appeal) was or was not impartible or descendible to a single heir, held, according to the proper construction of the sunnud under which the latter was granted to the second son and his heirs or assigns for ever, that the — thereby created for the first time was not impartible or descendible otherwise than according to the ordinary rule of the Hindoo law. (P. C.) 3 P. C. R. 725 (L. R. 7 I. A. 38).

4. Zemindaree rights. *See* Jurisdiction 31, 32; Mortgage 92, 116.

5. The mere fact of the impartibility of an estate, or rather the mere fact that the succession to a — is governed by the law of primogeniture, does not deprive the zemindar of his ordinary rights to alienate it, or any portion of it, during his lifetime. Accordingly an ordinary *mokurruree* lease granted by the zemindar of lands forming portion of a —, the succession to which is governed by the law of primogeniture, is valid, and the lands comprised in it cannot be resumed on the death of the grantor by his successor. But a *mokurruree khurposh*, or allowance for maintenance, or an estate for life in lieu of maintenance, granted by the owner of a — impartible by special custom, but otherwise subject to Bengal law, to a member of his family, is resumable by his successor on the death of the grantor. I. L. R. 5 Cal. 113.

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Zur-i-peshgee.

1. Where a plaintiff let out in — certain property for a fixed period at a certain rental, in consideration of a sum of money advanced, and the defendant withheld and did not tender the rent as it fell due: *Held* that the plaintiff was entitled to set-off the rent so withheld against the money advanced, and was entitled to claim an account as against the defendant, although the period for which the — lease had to run had not expired. I. L. R. 5 Cal. 333.

See Ancestral Property 12.
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